JOURNAL

OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY

BY

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AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῇ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

New Series. No. 3, *December*, 1899.

LONDON:

JOHN MURRAY, ALBEMARLE STREET.

1899.

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PRINTED BY
HAZELL, WATSON, AND VINEY, LD.,
LONDON AND AYLESBURY.

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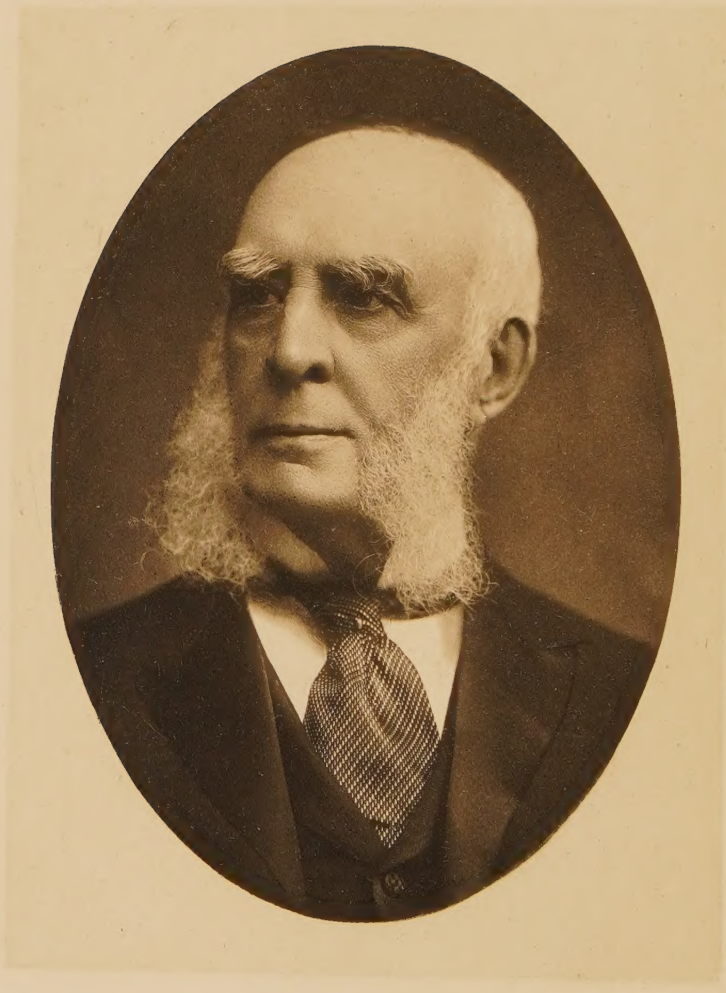

THE RIGHT HONOURABLE

SIR SAMUEL HENRY STRONG,

Chief Justice of Canada.

THREE COLONIAL CHIEF JUSTICES.

[The three portraits which appear in this number of the *Journal* will, it is hoped, have an interest not only for members of the Society of Comparative Legislation, but for the whole Empire. Sir Samuel Strong, Sir Henry de Villiers, and Sir Samuel Way are judges of eminence, representatives of the judicatures of important colonies. They were the first colonial judges appointed members of the Judicial Committee of the Privy Council under the Judicial Committee Amendment Act, 1895.]

THE RIGHT HON. SIR SAMUEL HENRY STRONG.

The Right Hon. Sir Samuel Henry Strong, Chief Justice of Canada, was born in 1825 at Poole, in Dorsetshire, the early home of his mother. His father was acting chaplain to the Forces at Quebec, and thither in 1836 the boy accompanied his father, receiving his education at the High School, Quebec. He was called to the Bar in Hilary Term, 1849, and commenced practice in Toronto. Law and equity were then in Canada, as in England, separated by a wide gulf. The future Chief Justice had to choose between them, and he chose the equity branch, and speedily won distinction therein. His abilities as a lawyer were recognised by his being appointed a member of the Commission for the Consolidation of the Statutes of Canada and Upper Canada, till then, to use King James's quaint phrase, "a crowd of statutes crossing and cuffing one another." In 1860 he was elected a Bencher of the Law Society of Upper Canada. Three years later he received the honour of silk, and on December 27th, 1869, just twenty years after his call to the Bar, reached that position for which his learning and abilities pre-eminently fitted him—the judicial bench—being appointed a Vice-Chancellor of the Court of Chancery. It was a time when important legal reforms were in contemplation—particularly a fusion of law and equity analogous to that which was being carried out almost contemporaneously under the operation of the Judicature Acts in England. To this reform Mr. Strong rendered valuable service, and in recognition of it he was chosen by Lord Dufferin a Puisne Judge in the newly constituted Supreme Court of Canada, and, on Sir W. J. Ritchie's death in 1892, he was elevated to the Chief Justiceship, and knighted. The Privy Councillorship conferred on him in 1897 was the appropriate crown of his career.

An author eminently trustworthy has said of the Chief Justice of Canada that in the capacity for grasping the vital and substantial points of a case he has had, and probably has now, no peer either at the Bar or on the Bench of Canada. There is no keener intellect on the Canadian Bench; and with this he unites patience, research, and impartiality. He is specially distinguished for his knowledge of law as a science and of the principles of jurisprudence.

THE RIGHT HON. SIR HENRY DE VILLIERS, K.C.M.G.

[*Contributed by* FREDERIC MACKARNESS, ESQ.]

SIR HENRY DE VILLIERS is probably the most distinguished man the Cape Colony has produced since the British occupation. By origin neither English nor Dutch, he is descended from one of the French Huguenot families which towards the close of the seventeenth century emigrated to the Cape to escape the persecution of their religion consequent upon the Revocation of the Edict of Nantes. They were placed by the Colonial Government in the Cape and Stellenbosch districts; and it was in the Paarl, that beautiful region of

> The land of climate fair and fertile soil,
> Teeming with milk and wine and waving corn,

which inspired Thomas Pringle, that the Chief Justice passed his boyhood. Born in 1842, and educated at the South African College in Capetown, he came before he was twenty to England to enter upon his legal career, and was called to the Bar at the Inner Temple in 1865. From the first moment of his return to the Cape his success was sure and rapid. He acquired a leading practice in Capetown, and in 1867 he was returned to the Cape Parliament as the representative of Worcester. Upon the introduction in the following year of responsible government at the Cape, he became the first Attorney-General under a system which he had long advocated, Sir John Molteno being Prime Minister. At the end of the next year the chief justiceship became vacant, and, though then barely thirty, Mr. de Villiers accepted the responsibilities of this high post. No more fortunate thing for the administration of justice in the colony could have happened. It is not too much to say that from the first the new Chief Justice displayed the qualities of a great judge. He has never forgotten what the greatest of Roman advocates said a judge should always remember, that "when sitting on the Bench he is not alone, but has ever at his side, as unseen assessors, law, equity, honour, and religion."[1] He established an early reputation as a sound lawyer, especially in the Roman-Dutch system which prevails in South Africa; and the result has been that for more than a quarter of a century the administration of the law in South Africa has been illuminated by a series of masterly decisions, marked not less by their lucidity than by their

[1] Cicero, *Pro Cluentio*, c. 58.

THE RIGHT HONOURABLE

SIR J. H. DE VILLIERS, K.C.M.G.,

Chief Justice of Cape Colony.

conciseness. Indeed, during Sir Henry's presidency over the Cape Supreme Court the principles of Roman-Dutch law have been enunciated and established in a way which has made their permanence throughout South Africa a certainty, and has made the Cape Supreme Court a sort of informal court of appeal for other states and colonies.

The Judicial Committee of the Privy Council were not slow to find out the value of the new Chief Justice. In 1880 the Anglican community in South Africa was rent in twain by a litigation between the late Bishop Merriman of Grahamstown and his dean. The real point at issue was how far, if at all, there was any legal connection between the Church of South Africa and the Church of England. Sir Henry, in an elaborate judgment, held that there was none. This was confirmed on appeal by the Privy Council, and their lordships began their judgment by a quite unusual expression of opinion:

> Before entering on the discussion whether the decree appealed from is right, their lordships wish to say that in the careful and elaborate judgment of the Chief Justice the case is treated with a gravity befitting its importance, and every topic in turn is handled with a fulness and clearness which are of the greatest assistance to those who have to review it.

Sir Henry was then barely thirty-eight, and from that time he was marked out for distinction by the Imperial Government. In the same year he was knighted. In 1882 he was made a Knight Commander of the Order of St. Michael and St. George. In 1896 he was appointed a member of the Judicial Committee of the Privy Council, being the first colonial judge ever raised to that high honour. In the same year he came to London and sat for some months on the Board in Downing Street.

Sir Henry's achievements have not been confined to the judicial sphere, inasmuch as he occupies in his capacity as President of the Cape Legislative Council a political status in some respects like that of the Lord Chancellor in England. On several occasions important political missions have been entrusted to Sir Henry both by the Imperial and Colonial governments. But it is not within the province of this journal to deal with anything more than his legal career.

THE RIGHT HON. SIR S. J. WAY, BART.

Among the men who have won their way to distinction in the colonies, and by their career reflected honour on the land of their adoption, the Chief Justice of South Australia holds a conspicuous place. When about seventeen years of age, in 1853, he left England to join his family in that colony. Eight years afterwards he was called to the Bar, and after a brilliant career extending over fifteen years he was raised to the bench. He brought to it all the qualities of a sound and learned lawyer, added to industry that never flagged and patience that was inexhaustible. As Chief Justice of the colony, Sir Samuel Way has gone on steadily from year to year increasing his reputation, and he is now acknowledged to be one of the ablest constitutional lawyers in the colonies. It is the best testimony to the estimation in which the Chief Justice is held that when Lord Rosebery's proposal to give the colonies direct representation on the Judicial Committee of the Privy Council was under consideration, Sir Samuel Way was nominated by five of the Australian governments as their representative, his knowledge of Australian conditions and requirements eminently fitting him, it was felt, to fill that office.

Like the old English Justiciars, the Chief Justice has also held the position of Lieutenant-Governor of the province, and has on several occasions administered the government for long periods. In all manner of good works the Chief Justice has been foremost. He has been Chancellor of the University of Adelaide for sixteen years; Chairman of the Board of Governors of the Public Library; President of the Adelaide Children's Hospital since its establishment; and Grand Master of the South Australian Constitution of Freemasonry. In all these spheres of usefulness he has proved himself capable and judicious, and has borne himself with dignity and credit. In June of the present year her Majesty the Queen was pleased to confer a baronetcy upon the Chief Justice.

THE RIGHT HONOURABLE

SIR SAMUEL JAMES WAY, Bart.,

Chief Justice of South Australia.

INDIAN AND COLONIAL APPEALS TO THE PRIVY COUNCIL.

[*Contributed by* A. Wood Renton, Esq.]

The main object of this article is to tabulate the conditions of appeal to the Privy Council from the Queen's dominions beyond seas, and from those countries in which ex-territorial jurisdiction has been regulated under the Foreign Jurisdiction Acts. But a brief general introduction may not be out of place.

I.—Subject to Propositions II., IV., and V., it is the inherent prerogative right, and on proper occasions the duty, of the Queen in Council to exercise an appellate jurisdiction in all Indian and colonial cases, criminal as well as civil.

(1) Cp. *Reg.* v. *Bertrand* [1867], L. R. 1 P. C. 520, from which the proposition is adapted. (2) *Reg.* v. *Joykissen Mookerjee* [1862], 1 Moo. P. C. N. S. 272. (3) Knapp, *Reports* [1829-36], vol. ii., Appendix, p. iv.: "*The general rule with reference to appeals from the Colonies appears to be . . . that they are received upon petition to the Council from all Courts in the (Queen's) dominions, on the ground that it is the right of subjects to appeal to the Sovereign to redress all wrongs done to them in any Court of Judicature.*" The existence of such a right in the subject clearly makes the exercise of the appellate jurisdiction "on proper occasions the duty" of the sovereign. And see *per cur. re Lord Bishop of Natal* [1864], 3 Moo. P. C. N. S. 156; 12 L. T. N. S., at p. 193. Cp. further, 25 Hen. VIII., No. 19, s. 4; Forsyth's *Cases and Opinions*, pp. 378, 379; *Falkland Islands Co.* v. *Reg.* [1863], 1 Moo. P. C. N. S. 312; 9 L. T. N. S. 103; *Rahimbhoy Habibbhoy* v. *C. A. Turner* [1890], I. L. R. 15 Bom. 155, at p. 158; *Christian* v. *Corren* [1716], 1 P. Wms. 329; 5 Moo. P. C. 302; *Reg.* v. *Alloo Paroo* [1847], 3 Moo. Ind. App. 488.

II.—This prerogative right may be abandoned altogether, or restricted, by the Crown, with, or in pursuance of, the sanction of the Legislature; but such abandonment or restriction must be clearly expressed in the instrument alleged to contain it.

Notes.—*With the sanction.* Cp. *Reg.* v. *Alloo Paroo* [1847], 3 Moo. Ind. App. 488), *per* Lord Brougham: "The Crown may abandon a prerogative, however high and essential to public justice and valuable to the subject,

if authorised by statute to abandon it": also, *Cuvillier* v. *Aylwin* [1832], 2 Knapp, 72; and *ib.*, Appendix, p. iv.

Clearly expressed. Cp. *Théberge* v. *Laudry* [1876], 2 App. Cas. 102: "Express words are necessary to limit the prerogative of the Crown." But see cases of the type of *Théberge* v. *Laudry* (*supra*), which show that the jurisdiction delegated to election petition courts by colonial legislative bodies may be so special in its character as not to involve as one of its incidents (although the prerogative is not in terms taken away) a right of appeal to the Crown, unless, perhaps, the dispute goes to the root of the validity of the colonial statute constituting the courts: *Valin* v. *Langlois* [1879], 5 App. Cas. 115; *Cushing* v. *Dupuy* [1880], 5 App. Cas. 409; *Kennedy* v. *Purcell* [1888], 59 L. T. 279. Cp. *In re Nahon & Pariente* [1832], 2 Knapp 66. A colonial legislature cannot take away the prerogative of the Crown to entertain colonial appeals as a matter of grace where this branch of the prerogative is either reserved, or not expressly abandoned, in the constituent Act—*Cushing* v. *Dupuy* (*ubi supra*), at pp. 409 and 416. This question may assume practical importance in the case of the Federal High Court of Australasia (q.v. *infra*).

III.—There is, in general, an appeal to her Majesty in Council from the highest civil courts of her Indian and colonial possessions, whether they are courts of error or not. This is an appeal as of right, if the prescribed conditions (as to which see *infra*, p. 350) are complied with. There is, as a rule, no appeal as of right except from a final and definitive judgment.

The system has been extended by orders in council to the various foreign countries in which ex-territorial jurisdiction has been regulated under the Foreign Jurisdiction Acts. (For interesting cases of appeal see *Bulkeley* v. *Schutz* [1871], L. R. 3 P. C. 764; *Abd-ul Messih* v. *Farra* [1888], 13 App. Cas. 431; *Pitts* v. *La Fontaine* [1883], 5 App. Cas. 564).

IV.—The Queen in Council may, in the exercise of her general jurisdiction and in the absence of any charter or statutory right, grant special leave to appeal in civil cases of substantial, general, or constitutional importance. Cp. *re Minchin* [1847], 6 Moo. P. C. 43; *Bute* v. *Mason* [1849], 7 Moo. P. C. 1; *D'Orliac* v. *D'Orliac* [1844], 4 Moo. P. C. 374; *Flint* v. *Walker* [1845-7], 5 Moo. P. C. 180; *Shire* v. *Shire* [1845], 5 Moo. P. C. 81; *Bank of Australasia* v. *Breillat* [1847], 6 Moo. P. C. 152. Cp. also *Gour Monee Dossee* v. *Jogendro Narain Chowdury* [1866], 12 Jur. N. S. 477.

Illustrations.—(1) The High Court of Judicature for the North, West Provinces of India ordered an infant to be taken from the custody of her mother, a Mohammedan, on the ground that the minor's deceased father had been a professed Christian, and her mother, who, as the court held, was living in adultery, was inducing her daughter to adopt the faith and habits of a Mohammedan (*re Skinner* [1870], L. R. 3 P. C. 451). (2) A question was raised involving the right of the Legislature of Victoria to commit for contempt and breach of the privilege of that Assembly, under

the general warrant of the Speaker (*Speaker of the Legislative Assembly of Victoria* v. *Glass* [1871], L. R. 3 P. C. 561). (3) The Supreme Court of the Straits Settlements refused leave to appeal to the Queen in Council, on the ground that it did not possess the power to grant such leave (*Neo* v. *Neo* [1873], L. R. 5 P. C. 89).

In (1), (2), and (3) special leave to appeal was granted (cp. also *Carter* v. *Molson* [1883], 8 App. Cas. 530).

But (A) a suit involved a question as to a sum of about £1,000, and no more. No grave point of law or of public interest carrying with it any after consequences depended on its decision; nor was it clear that beyond the litigants any parties were interested in it (*Prince* v. *Gagnon* [1883], 8 App. Cas. 102: account taken of question whether judgment appealed against is plainly or probably right). Cp. also *Valin* v. *Langlois* [1879], 5 App. Cas. 115; *Canada Central Railway Co.* v. *Murray* [1883], 8 App. Cas. 574. (B) A claim was resisted not on its merits, but on the ground of a mere formal defect in procedure on the part of the claimant (*ex parte Kennington* [1862], 8 Jur. N. S. 1111).

In (A) and (B) special leave to appeal was refused.

In determining the importance of the issue, consideration will be given to divergences of opinion in the court below, and to the extent to which the decision has been based upon English authorities (*Robinson* v. *Canadian & Pacific Railway* [1892], App. Cas. 481, at p. 485).

V.—The Queen in Council will not review or interfere with the course of criminal proceedings in any of her Indian or Colonial courts, unless it is shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice or otherwise, substantial and grave injustice has been done.

This proposition is borrowed from the judgment of the Privy Council delivered by Lord Watson in *re A. M. Dillet* [1887], 12 App. Cas., at p. 467. The dictum in *Reg.* v. *Eduljee Byramjee* [1846], 5 Moo. P. C. 276, that "no appeal lies in cases of felony to the Queen in Council from any of the dominions of the Crown of Great Britain which are governed by the laws of England," may be considered as overruled. The circumstances under which the Privy Council will entertain criminal appeals are well stated by Sir J. T. Coleridge in *Reg.* v. *Bertrand* [1867], L. R. 1 P. C., at p. 530: "*Any application to be allowed to appeal in a criminal case comes to this Committee labouring under a great preliminary difficulty—a difficulty not always overcome by the mere suggestion of hardship in the circumstances of the case. When the suggestions, if true, raise questions of great and general importance, and likely to occur often, and also where, if true, they show the due and orderly administration of the law interrupted and diverted into a new course which might create a precedent for the future, and also where there is no other means of preventing these consequences, then it will be proper for this Committee to entertain an appeal if referred to it for its decision.*"

Cp. also *Reg.* v. *Joykissen Mookerjee* [1862], 1 Moo. P. C. N. S. 272; *Levien* v. *Reg.* [1867], L. R. 1 P. C. 536; *Falkland Islands Co.* v. *Reg.* [1863], 1 Moo. P. C. N. S. 312; 9 L. T. N. S. 103; *Riel* v. *Reg.* [1885], 10 App. Cas. 675; *Carew* v. *Crown Prosecutor in Japan* [1897], App. Cas. 719; *In re MacCrea* [1893], App. Cas. 346 (special leave not granted in every case of misdirection; note also that in this case leave to appeal had been refused by the Indian High Court); *Dinizulu* v. *A.-G. of Zululand* [1890], 61 L. T. 740: *Sprigg* v. *Sigcau* [1897], App. Cas. 238.

Illustrations.—(1) The Supreme Court of British Guiana suspended two counsel from practice for six months (*re Downie* [1841], 3 Moo. P. C. 414). Appeal entertained. (2) A. M. D., a solicitor of the Supreme Court of British Honduras, was convicted of perjury upon a most improper and unfair charge to the jury by the Chief Justice of the colony, and was sentenced to six months' imprisonment, which he underwent. He was, thereafter, struck off the rolls of the court in respect of the said conviction. A. M. D. obtained leave to appeal to the extent of showing that the conviction was so improperly obtained that it ought not to be conclusive for the purpose of striking his name off the rolls (*re A. M. Dillet* [1887], 12 App. Cas. 459).[1] (3) A colonial court improperly granted a new trial in a case of felony: appeal allowed (*Reg.* v. *Bertrand* [1867], L. R. 1 P. C. 520. Cp. also *Reg.* v. *Murphy* [1868], L. R. 2 P. C. 35; *Reg.* v. *Coote* [1873], L. R. 4 P. C. 599). (4) *Falkland Islands Co.* v. *Reg.* [1863], 1 Moo. P. C. N. S. 312. In this case the decision—a summary conviction for penalties for killing animals *ferœ naturæ*—involved the right of the Falkland Islands Co. to hunt and take wild cattle upon grazing stations, and the lands attached thereto. The Ordinance under which the conviction was made granted no appeal. The Judicial Committee advised her Majesty to grant an appeal, in analogy to proceedings by *certiorari* in England, on the understanding that the question of title and right would appear on the face of the record, which was ordered to be brought up.

In the following cases the Privy Council refused to entertain, or dismissed, an appeal: (1) A petition was presented for leave to appeal, on the ground of irregularities at the trial, from a conviction, judgment, and sentence of the Supreme Criminal Court of Bengal (*Reg.* v. *Joykissen Mookerjee* [1862], 1 Moo. P. C. N. C. 272). (2) Special leave to appeal from a conviction

[1] It was formerly held that the Judicial Committee had no jurisdiction to entertain an appeal from orders by a Court of Record in the colonies inflicting fines for contempt of court (*Rainy* v. *The Justices of Sierra Leone* [1852, 1853], 8 Moo. P. C. 47); but contempt is now treated as a criminal matter, and special leave is given in the exercise of the prerogative in criminal cases. Cp. *re Bahama Islands* [1893], App. Cas. 138; *McLeod* v. *St. Aubyn* [1899], 15 T. L. R. 487; and cases of the kind may be referred under 3 & 4 Will. IV., c. 41, s. 4: see further, *Smith* v. *The Justices of Sierra Leone* [1841], 3 Moo. P. C. 361; *In re Stewart* [1868], L. R. 2 P. C. 88; *In re Wallace* [1866], L. R. 1 P. C. 283; *re Macdermott* [1866], L. R. 1 P. C. 260; *Macdermott* v. *The Judges of British Guiana* [1868], L. R. 2 P. C. 341; *re Pollard* [1868], L. R. 2 P. C. 106, 118.

for libel by a colonial court having been given, subject to the question of the jurisdiction of her Majesty to admit such an appeal, it appeared that, since such qualified leave had been obtained, the prisoner had been granted a free pardon. The Judicial Committee thereupon declined to enter upon the merits of the case, or to pronounce an opinion upon the legal objections to the conviction, the prisoner having already obtained all the substantial, if not the technical, benefit which could be conferred by a successful appeal (*Levien* v. *Reg.* [1867], L. R. 1 P. C. 536). (3) A prisoner was tried before a Canadian magistrate and a jury of six for high treason, and sentenced to death. The sentence was confirmed by the Court of Queen's Bench in Manitoba. The prisoner applied for special leave to appeal to the Privy Council on the grounds that the stipendiary magistrate had no jurisdiction, and that, even if he had jurisdiction, there were irregularities in the proceedings which vitiated the trial—*e.g.* no previous inquest, no indictment preferred by a grand jury, and that no notes of the evidence had been taken, as required by the statute. Those points had been fully considered by the Court of Queen's Bench, and the defence of insanity set up for the prisoner at the trial had been rejected by the Jury (*Riel* v. *Reg.* [1885], 10 App. Cas. 675; and cp. *ex parte Deeming* [1892], App. Cas. 422; *Gangadhar Tilak* v. *Queen-Empress* [1897], 25 Ind. App. 1; *Kops* v. *Reg.* [1894], App. Cas. 650).

VI.—Legal questions of a general nature may be referred to the Judicial Committee (cp. *Maltese Marriage Case*); and in some cases questions which are both legal and political have been referred to a mixed committee.

Where the removal of a colonial judge is in question (see *ex parte Robertson* [1858], 11 Moo. P. C. 288; *Willis* v. *Gipps* [1846], 6 St. Tr. N. S. 311; and article "Amotion," in *Encyclo. Laws of England*) the Colonial Secretary sits with the Judicial Committee. See, on the whole subject, MacQueen, *Privy Council Practice*, pp. 61, 64, *et seq.*, and *Memo. of Lords of Council on removal of Colonial Judges*, in 6 Moo. P. C. N. S., after p 348. Where the rights of the States of Jersey have been brought into question, the matter may be referred to a committee for Jersey and Guernsey, on which the Home Secretary sits with some of the members of the Judicial Committee.

My thanks are due for much information most kindly supplied, with regard to the subject matter of the following table to Sir Courtenay Ilbert, K.C.S.I., Mr. W. E. Davidson, C.B., Q.C., Mr. H. F. Wilson, Mr. H. Bertram Cox, Mr. Alexander Pulling, and Mr. W. F. Craies. For any inaccuracies that there may be in the table I am, of course, solely responsible.

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.[2]	Limit of time within which leave to appeal must be asked.	Security required.
ADEN. *Remarks.*—Subject to the Government of Bombay. Conditions of appeal to Bombay will be found in Acts of India, No. 2 of 1864; *viz.* appeal in civil cases, where claim exceeds Rs.1000, to High Court of Bombay (Act 2 of 1864, s. 8): Resident may refer question of law where claim less (*ib.*): no appeal in criminal cases, but case may be reserved (*ib.*, s. 29). Act 2 of 1864 extended to Perim and other dependencies of Aden, by Aden Laws Regulation, 1891 (Reg. II. of 1891).[3] See, as to prior state of law, *Queen-Empress* v. *Mangal-Tekchand* [1886], I. L. R. 10 Bom. 258, 263, 274. For conditions of appeal to Judicial Committee, see BRITISH INDIA, *infra*; see also PERIM, *infra.*				
ADMIRALTY (COLONIAL COURTS OF). See 53 & 54 Vict., No. 27, ss. 6, 7, and Order in Council of July 18th, 1898 (Stat. R. and O., 1898, p. 1124).				
AFRICA. *Remarks.*—The Africa Order in Council,[4] 1889, provides for the constitution of "local jurisdictions" on the Continent of Africa. No "local jurisdiction" can be created in (1) any place within the territorial jurisdiction of the courts of any colony or possession of her Majesty in Africa, including Mauritius; (2) Morocco, Tunis, Liberia, Sultan of Zanzibar's territory, South Africa Republic, Orange Free State; (3) any place as to which any other independent Order in Council is in force; (4) any place subject to the jurisdiction of the Egyptian courts (s. 6). The Order in Council provides for the constitution				

Instructions. By Instructions of July 31st, 1891 (Hert. xix. 1), the following local jurisdictions and appellate courts were constituted: Oil River Protectorate, *Court of Appeal* = Supreme Court of Lagos; Congo, *Court of Appeal* = Supreme Court of Gold Coast; British sphere in East Africa, excluding the territory of the Sultan of Zanzibar, *Court of Appeal* = High Court of Bombay; Madagascar, *Court of Appeal* = Supreme Court of Mauritius; British sphere north of the Zambesi, *Court of Appeal* = Supreme Court of Cape of Good Hope; and see Cape Act, No. 3 of 1890. The Order may extend (1) to NIGER PROTECTORATE, (2) any existing or future protectorate, (3) territories under International Association of Congo or under Government of Free States, subject to Berlin Convention of December 16th, 1884. Under the Africa Order in Council, 1889, Art. 82, appeals may be taken to the Privy Council from the several Supreme Courts above mentioned, on the conditions on which appeals lie from these courts respectively (see *infra.*, Stat. R. and O. Rev., vol. iii., p. 259; Stat. R. and O., 1892, p. 486; *ib.* 1893, p. 308; and further see Southern Rhodesia (SOUTH AFRICA) Order in Council, 1898 (*London Gazette*, 1898, p. 7675); Stat. R. and O., 1898, p. 385; Cape Act, No. 22 of 1898, ss. 7-10. The S. R. Order in Council, 1898, took effect on November 25th, 1898 (*London Gazette*, 1899, p. 681). See also Natal Law, No. 18, of 1890, constituting Supreme Court of Natal a Court of Appeal from any court in territory outside ZANZIBAR. Appeal from NATAL to Privy Council on usual conditions). See also CAPE OF GOOD HOPE, NATAL, SOUTH AFRICA, etc.

AJMERE, MERWARA. Appeal to Privy Council

[1] The scheme of this table has been taken from Macpherson's *Privy Council Practice*, pp. 699, *et seq.*; see also Wheeler, *Confederation Law of Canada*, pp. 1008-14.

[2] In ascertaining the appealable amount, the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal (*Macfarlane* v. *Leclaire* [1862], 15 Moo. P. C. 181). The measure of value for determining the right of appeal is therefore (i) in the case of a plaintiff the amount for which the defendant has successfully resisted a decree (*Mohideen Hadjiar* v. *Pitchey* [1893], App. Cas. 193); (ii) in the case of a defendant the amount which the plaintiff has recovered (*Allan* v. *Pratt* [1888], 13 App. Cas. 780).

[3] The Governor-General, apart from his council, has power under 33 Vict., No. 3, to make regulations for the more backward regions known as the "scheduled districts."

[4] On the law as to foreign jurisdiction see Hall, *Foreign Jurisdiction*; Piggott, *Ex-territoriality*; Ilbert, *Government of India*, p. 423; Article, "Foreign Jurisdiction," in *Encyclo. Laws of England* (W. F. Craies).

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
from Chief Commissioner's Court (see Act 10 of 1897, s. 3 [24], and Ajmere Code, Reg. I.[1] of 1877, s. 6) on same conditions as from BRITISH INDIA. *Remarks.*—See Ajmere Code (1877, Reg. I.[1]), ss. 14, *et seq.*, and s. 37; Reg. IX.,[1] 1890; and cp. *Sameer Mull and Chunder Mull* v. *Chogalall* [1879], L. R. 6 Ind. App. 238; *Thakur of Masuda* v. *Widows of Thakur of Nandwara* [1880], I. L. R. 2 All. 819.				
ALDERNEY. See GUERNSEY.				
ANGUILLA. See LEEWARD ISLANDS.				
ANTIGUA. See LEEWARD ISLANDS.				
AUSTRALASIA. *Remarks.*—By the Federal Council of Australasia Act, 1885, 48 & 49 Vict., No. 60, power was given to the following colonies (including their dependencies)—Fiji, New Zealand, New South Wales, Queensland, Tasmania, Victoria, Western Australia, South Australia, and any other colonies that may hereafter be created in Australasia—to create a Federal Council by which extensive legislative powers may be exercised; *e.g.* in regard to ex-territorial service of civil and of criminal process, extradition, any matters referred to the Council by Order in Council at request of legislatures, and any other matters of general Australasian interest, with respect to which the legislatures of the several colonies can legislate within their own limits, and as to which it is deemed desirable that there should be a law of general application, provided that in such cases the Acts of the Council shall extend only to the colonies				

as may afterwards adopt the same (s. 15). This statute was not to come into operation until the legislatures of four colonies at least had passed Acts or Ordinances for the purpose. In January, 1895, the Premiers of all the Australian colonies, meeting at Hobart, agreed on a scheme for complete federation, and drafted Enabling Bill for election of delegates by each colony to prepare it. The Enabling Bill has been adopted by New South Wales (59 Vict., No. 24); Tasmania (1895, No. 24); South Australia (1895, No. 632; and see 61 & 62 Vict., No. 717); Victoria (Act 1443 of 1896); Western Australia (1896, No. 7); Queensland (No. 1 of 1899). On the whole subject see *Colonial Office List* (tit. *Victoria*) and two admirable articles by Mr. A. H. F. Lefroy on "The Commonwealth of Australia Bill," in the *L. Q. R.* for April and July, 1899. The 3rd Schedule of this Bill (see *e.g.* N. S. W., No. 2 of 1899) contains the draft constitution of the proposed Australasian Federal Supreme Court. This tribunal is to be called the High Court of Australia, and is to consist of the Chief Justice and not less than two puisne judges. No appeal is to lie to the Privy Council in any matter involving the construction of the constitution of the Commonwealth or of a State, unless the public interests of some part of her Majesty's dominions other than the Commonwealth or such State are brought into question. Subject to this limitation, the prerogative right of the Crown to entertain appeals as of grace is preserved. But Parliament may make laws limiting the matters in which leave may be asked. These provisions appear to be a revival of the attempt unsuccessfully made by Canada (vide *ante*) to take away the prerogative of the Crown to grant special leave to appeal to the Privy Council in all civil cases. But *semble*, an Imperial Act will be needed, and their effect will doubtless be carefully considered.

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[1] See Note 3 on p. 351.

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
AUSTRALIA: NEW SOUTH WALES. *Remarks.*—By Charter of Justice, Oct. 13th, 1823 (Clark, *Col. Law*, 627, p. 636), the appealable value was £2000.	Order in Council of Nov. 13th, 1850 (Stat. R. and O. Rev., vol. iv., p. 347).	A sum exceeding, or a claim to property or civil right amounting to, £500.	Fourteen days from the date of the judgment appealed against.	Regulated by the court below, and to be found within three months of the petition for leave to appeal. Execution may be suspended or carried out, respondent giving good and sufficient security. *Pro formâ* judgment sufficient for purpose of appeal where judges equally divided.
QUEENSLAND. *Remarks.*—By Constitution Act, 1867, 31 Vict., No. 38, s. 24, appeal lies to Privy Council as to vacancy in Legislative Council.	Order in Council of June 30th, 1860 (Stat. R. and O. Rev., vol. iv., p. 366), 24 & 25 Vict., No. 44.	A sum exceeding, or a claim to property or civil right amounting to, £500.	Fourteen days from the date of the judgment appealed against.	Not exceeding £500. Execution may be suspended or carried out, respondent giving good and sufficient security. *Pro formâ* judgment sufficient for purpose of appeal where judges equally divided.
SOUTH AUSTRALIA. *Remarks.*—See Stat. R. and O. Rev., vol. iv., p. 379; *Jour. Soc. Comp. Leg.*, vol. ii., p. 279.	Order in Council of June 9th, 1860.	A sum exceeding, or a claim to property or civil right amounting to, £500.	Within fourteen days after date of judgment.	Not exceeding £500. Execution may be suspended or carried out, respondent giving good and sufficient security. *Pro formâ* judgment sufficient for purpose of appeal where judges equally divided.
VICTORIA. *Remarks.*—As to the relation between the Order in Council and the Act, see *ex parte Rolfe* [1863], 2 W. & W. 51. See also *Pearson* v. *Russell* [1889], 15 V. L. R. 89; *Commercial Bank of Australia* v. *McCaskill* [1897], 23 V. L. R. 343; *Alliance Contracting Co., Ltd.*, v. *Russell* [1898], 23 V. L. R. 545.	Order in Council of June 9th, 1860 (Stat. R. and O. Rev., vol. iv., p. 393); and Supreme Court Act, 1890, s. 231.	A sum exceeding, or a claim to property or civil right amounting to, £500. Under the Supreme Court Act, 1890, s. 231, the appealable amount is £1000.	Within fourteen days after date of judgment.	Not exceeding £500. Execution may be suspended or carried out, respondent giving good and sufficient security. *Pro formâ* judgment sufficient for purpose of appeal where judges equally divided.
WESTERN AUSTRALIA. *Remarks.*—As to appeals to Supreme Court,	Order in Council of Oct. 11th, 1861, and 34 Vict. No. 15 s. 30	A sum exceeding, or a claim to property or civil right amounting to, £500.	Within fourteen days after date of judg-	Within twenty-eight days. Execution stayed if notice of appeal given and security

BAHAMA ISLANDS. *Remarks.*—Cp., for old law, *Bahama Laws*, 2 Vict., No. 9, appeal from Governor in Council; 10 Vict., No. 12, appeal from the Courts of Chancery and ordinary; 22 Vict., No. 24, s. 51, and 23 Vict., No. 20, appeal from all sentences and decisions made by full Divorce Court. As to modes of legislation, see *Jour. Soc. Comp. Leg.*, N. S., vol. i., p. 296.	Supreme Court Act, 1896.	Final judgment, or order on claim or question of value of, £500. Appeal by leave where amount less than £500.	No time prescribed.	Regulated by court below, not exceeding £500; within one month. Execution to be suspended on appellant giving security to satisfaction of court.
BARBADOS. See WINDWARD ISLANDS.				
BASUTOLAND. *Remarks.*—Disannexed from Cape Colony (see CAPE OF GOOD HOPE and Stat. R. and O. Rev., vol. viii., p. 392) by Cape Act No. 34 of 1883, confirmed by Proclamation, March 18th, 1884. Resident commissioner has power to make rules as to appeals. Cape law to be applied as far as possible (Proclamation, May 29th, 1884).				
BECHUANALAND PROTECTORATE. See SOUTH AFRICA; BRITISH BECHUANALAND.				
BENGAL. See BRITISH INDIA.				
BERMUDA. *Remarks.*—See recent appeal by special leave from Court of General Assize of Bermuda in Chancery (*Pilkington* v. *Gray* [1899], App. Cas. 401); *Jour. Soc. Comp. Leg.*, vol. ii., p. 261.	Order in Council of July 18th, 1894. Royal Instructions Court Act, 1814, 2 Vict., No. 9, s. 9. Berm. Acts, 1836, No. 15 (appeal only from final decree or interlocutory decree having force or effect of final decree). Cp. also Mandamus Act, 1868, s. 11; Court of Chancery Act, 1876, ss. 13, 14.	From Court of Errors, more than £500; from Court of General Assize in Chancery, more than £300.	In the Court of Errors, twenty days; in the Court of General Assize in Chancery, fourteen days.	Security in Court of Errors double the amount in dispute; in Court of General Assize in Chancery, good and sufficient security; within thirty days.
BOMBAY. See BRITISH INDIA.				

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
BRITISH BALUCHISTAN. *Remarks.*—From Court of Chief Commissioner on same conditions as from BRITISH INDIA (*q.v.*). See Act No. 10 of 1897, s. 3 (24), and Brit. Bal. Civil Justice Regs., No. 2 of 1890, ss. 2, 7 (1), and No. 3 of 1893.				
BRITISH BECHUANALAND. *Remarks.*—Same conditions as CAPE OF GOOD HOPE. Arts. 50, 51, and 52 of Cape Charter (embodying conditions of appeal) to apply to; Proc. No. 9, B. B., 1886. British Bechuanaland annexed to Cape Colony by Act No. 41 of 1895 (Nov. 9th, 1895). See *Reg.* v. *Jameson* [1896], 2 Q. B. 425.				
BRITISH CENTRAL AFRICA. *Remarks.*—See Notification of Feb. 22nd, 1893 (Hert. xix. 8); also treaties (*ib.* xx. 11).				
BRITISH COLUMBIA. See CANADA.				
BRITISH GUIANA. *Remarks.*—*Laws of British Guiana*, edit. 1895, vol. i., p. 35. For the early history of the courts and laws of British Guiana, see *McDermott's Case* [1868], L. R. 2 P. C. 341, 347; *Jour. Soc. Comp. Leg*, vol. i., p. 140.	Orders in Council of April 23rd, 1831, and June 20th, 1831.	Sum or matter of greater amount or value than, or involving directly or indirectly title to property or to civil right amounting to or of value of, £500.	Fourteen days.	Judgment to be carried into execution if respondent give security for immediate performance of judgment of Privy Council, unless appellant satisfy court that "real and substantial justice" requires a stay and finds security; appellant's security to be not more than £300, and to be found within three months from date of petition for leave to appeal. Petition lies to Privy Council against order as to security. Where subject

				matter is immovable property or stock, etc., thereon, and judgment does not charge, affect, or relate to actual occupation, no security is to be demanded from either party; where judgment does so charge, etc., no greater security than necessary to preserve its integrity.
British Honduras. *Remarks.*—For political history of British Honduras, see *A.-G. for Brit. Hon.* v. *Bristowe* [1880], 6 App. Cas. 143; *Hodge* v. *A.-G. for Brit. Hon.* [1864], 2 Moo. P. C. N. S. 325. Mortmain Act not applicable to colony (*Jex.* v. *McKinney* [1889], 14 App. Cas. 77); *Jour. Soc. Comp. Leg.*, vol. i., p. 367.	*Consolidated Laws of British Honduras*, edit. 1887, pp. 26, 28, 836. British Honduras (Court of Appeal) Act, 1881, 44 & 45 Vict., No. 36. Order in Council of Nov. 30th, 1882 (Stat. R. and O. Rev., vol. i., p. 766). Ordinance No. 14, 1879.	Any judgment, etc., of Supreme Court (Ordinance, 1879, s. 59), not decision on appeal from summary jurisdiction (*ib.*, s. 60), or order made by court in exercise of disciplinary jurisdiction (*Consol. Laws*, p. 26; and see *ib.*, p. 836, No. 106, s. 24, appeal in regard to decision as to title of registered land). Under British Honduras (Court of Appeal) Act, 1881, 44 & 45 Vict., No. 36, and Order in Council of Nov. 30th, 1882, an appeal lies from Supreme Court of British Honduras to Supreme Court of Jamaica from any judgment as to a sum or claim to civil right of or above value of £50.	Eight clear days	Execution stayed on notice of appeal if security to amount regulated by court given to prosecute appeal within three months.
British India. *Remarks.*—High Court includes Recorder of Rangoon for the purposes of Act 14 of 1882, s. 595 (appeals to Privy Council), and also in virtue of Act 10 of 1897, s. 3 (24), the chief court in Punjab and British Baluchistan, Court of Judicial Commissioner in Burma, Central Provinces, Oudh, and Coorg. The chartered High Courts are Calcutta, Bombay, Madras, Allahabad. A chief court for Burma will probably be created at an early date. The charters	Code of Civil Procedure, Act 14 of 1882, ss. 595, 596, *et seq.*; and cp. Order in Council of April 10th, 1838 (Stat. R. and O. Rev., vol. iv., p. 330), and charters (1) Fort William, Dec. 28th, 1865 (*ib.*, vol. iv., p. 82); (2) North-	From final decree (including judgment and order) on appeal by High Court or other court of final appellate jurisdiction, or by High Court in exercise of original civil jurisdiction, where, both in Court of First Instance and in Privy Council, claim amounts to Rs. 10,000 or upwards, or property of like	S. 599 of Code of Civil Procedure, requiring application to be made within six months from date of decree, was repealed by Act 7 of 1888.	Regulated by court. To be found within six months of date of decree, or six weeks from grant by court whose decision is appealed against of certificate of leave to appeal, whichever is of later date. Execution may be carried out or suspended, respondent or appellant giving security, as case may

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
of the Supreme Court (see Ilbert, *Government of India*, pp. 350, *et seq.*) authorised those courts to grant leave to appeal to the Privy Council in all criminal proceedings before them (2 Morley's *Dig.* 582, 628, 679; Mayne, *Crim. Law Ind.*, p. 971). The Indian courts act on same principles as Privy Council in dealing with petitions for special leave to appeal in criminal cases (cp. *Reg.* v. *Pestanji Dinshá* [1873], 10 Bom. H. C., p. 92). The Privy Council may entertain petitions for special leave to appeal in criminal cases, even where High Court has refused it (see *ex parte Macrea* [1893], App. Cas. 346).	West Provinces, March 17th, 1866 (*ib.*, vol. iv., p. 121); (3) Madras, Dec. 28th, 1865 (*ib.*, vol. iv., p. 96); (4) Bombay, Dec. 28th, 1865 (*ib.*, vol. iv., p. 108). S. 612 of Act 14 of 1882 gives power to make rules as to appeals.	amount or value. Where decree, proposed to be appealed against, affirmed decision of Court of First Instance, some substantial question of law must be involved. *Semble*, it is not necessary that the question of law should arise out of the facts as concurrently found; it is sufficient if they arise on the evidence without reference to the findings (*Moran* v. *Mittu Bibee* [1876], I. L. R. 2 Calc. 228). But see *In re Vishwa'mbkar Pandit* [1895], I. L. R. 20 Bom. 699; I. L R. 16 Calc., at p. 294. Appeal lies from any decree where case certified as fit one for appeal to Privy Council. See Act 14 of 1882, ss. 595, 598, 600, 601. No appeal lies from (i) any decree final under s. 586, or (ii) where two judges differ in opinion (ss. 575, 597, and *Sri Gridhariji Maharaj Tickait* v. *Purushotum Gossami* [1884], I. L. R. 10 Calc. 814).		be. There is power to impound any movable property in dispute. Security may be increased if found inadequate.
BRITISH NEW GUINEA. *Remarks.*—In civil matters where amount or value at stake exceeds £100, an appeal lies to the Supreme Court of Queensland at Brisbane, and thence to Privy Council, according to Queensland rules, as to which see AUSTRALIA (Order				

in Council of May 17th, 1888, Stat. R. and O. Rev., vol. i., p. 482). An appeal also lies from Colonial Court of Admiralty in all Admiralty matters, irrespective of value, to Supreme Court of Queensland at Brisbane, and thence to Privy Council on ordinary conditions (Order in Council of Nov. 24th, 1891, Stat. R. and O., 1891, p. 23). As to law in force in, see *Jour. Soc. Comp. Leg.*, vol. i., p. 375.				
BRITISH NORTH BORNEO. *Remarks.*— *London Gazette*, Nov. 8th, 1881, pp. 5448-53. No rules in charter, but provision was made by Art. 11 for issuing an Order in Council for exercise and regulation of her Majesty's jurisdiction in Borneo. It is believed that an Order in Council under this article received the assent of the Queen in Council, but that it has not been found necessary to put it into force. The State of North Borneo is now a British Protectorate (see Agreements, May 12th, 1888, Hert. xviii., p. 225). See BRUNEI, LABUAN, SARAWAK.				
BRUNEI. *Remarks.*—By an Order in Council of Nov. 22nd, 1890, provision is made for the establishment of British Consular Courts, and appeals to STRAITS SETTLEMENTS, and thence to Privy Council (Stat. R. and O., 1890, p. 685); but this order has never been brought into force. Relations between BRUNEI and NORTH BORNEO are governed by Agreements of May 12th, 1888 (Hert. xviii., p. 225), and Sept. 5th, 1888 (*ib.*, p. 227).	[Order in Council of Nov. 22nd, 1890.	From final decree for sum, etc., of value of, £500.	Fifteen days.	Regulated by court below. To be found within one month of filing of motion for leave to appeal. Execution may be suspended or carried out, appellant or respondent giving security, as case may be. Appellant in all cases to give security not exceeding £500. See *Remarks.*]
BURMA. See BRITISH INDIA.				
CANADA, DOMINION OF. *Remarks.*—The Supreme Court of Canada, established in 1875 by 38 Vict., No. 11 (Can.), amended by R. S. C., 1886, No. 135, and 54 & 55 Vict., No. 25, has an appellate jurisdiction, civil and criminal, over all Canada. An appeal lies to it—subject to regulations—from the final judgments of the highest court of final resort				

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
in every province. An unsuccessful litigant in the highest provincial court may, however, appeal direct to the Privy Council, under the rules in force before the constitution of the Supreme Court, or upon terms. "The judgment of the Supreme Court shall in all cases be final and conclusive, and no appeal shall be brought [from its judgment] to any Court of Appeal established by the Parliament of Great Britain and Ireland, by which appeals or petitions to her Majesty in Council *may be ordered* to be heard" (s. 47). As to scope of words in italics, see *S. Andrew's Church, Montreal* v. *Johnston* [1877], 3 App. Cas. 159. Her Majesty's prerogative to grant special leave is reserved (S. C., and op. *A.-G. for Nova Scotia* v. *Gregory* [1886], 11 App. Cas. 229). As to relations between Crown and provinces, see *Liquidator of Maritime Bank of Canada* v. *Receiver-General of New Brunswick* [1892], App. Cas. 437; *Jour. Soc. Comp. Leg.*, vol. ii., p. 265. See also Wheeler, *Confederation Law of Canada*, pp. 394, 405; *Valin* v. *Langlois* [1879], 5 App. Cas. 115.				
CANADA: PROVINCES.				
BRITISH COLUMBIA (including VANCOUVER'S ISLAND). *Remarks.*—Direct appeal to Privy Council, or appeal to Supreme Court of Canada, and thence only by special leave of Privy Council. [British Columbia and Vancouver's Island were united in 1866 by 29 & 30 Vict., No. 67, s. 3, and their Supreme Courts were merged from March 29th, 1870, under the title of "The Supreme Court of British Columbia."]	Order in Council of April 4th, 1856 (Stat. R. and O. Rev., vol. iv., p. 319).	Final order, judgment, or decree for any sum more than, or involving directly or indirectly any claim to property in civil right amounting to or of value of, £300.	Twenty-one days.	Execution may be stayed or not; if not, respondent must give good and sufficient security. In all cases appellant must give security, regulated by court below, and not exceeding £500, within twenty-eight days from date of petition for leave to appeal.

MANITOBA. *Remarks.*—Direct appeal to Privy Council or appeal to Supreme Court of Canada, etc. (vide CANADA, *supra*). Manitoba was created a province by the Manitoba Act, 1870, 33 Vict., No. 3; confirmed by 34 Vict., No. 28.	Man. Stat., 48 Vict., No. 48. Order in Council of March 10th, 1892 (Stats. of Can., 1892, p. xiii).	From any judgment for sum of, or involving directly or indirectly any claim to property or civil right above, £300.	Fourteen days.	Execution may be stayed or not; if not, respondent must give good and sufficient security. In all cases appellant must give security, regulated by court below, and not exceeding £500, within three months from date of petition for leave to appeal.
NEW BRUNSWICK. *Remarks.*—Direct appeal to Privy Council, etc. (vide CANADA, *supra*). Where the judges differ, and are equally divided, a *pro formâ* judgment is to be deemed a judgment for the purposes of appeals.	Order in Council of Nov. 27th, 1852 (Stat. R. and O. Rev., vol. iv., p. 344).	Final judgment for sum above, or involving directly or indirectly claim to property in civil right amounting to or of value of, £300; or questions whereby the rights of her Majesty, her heirs or successors, may be bound; or (by leave of the court) from interlocutory judgment.	Fourteen days.	The court may direct judgment to be carried out, respondent giving good and sufficient security, or suspended. Appellant's security regulated by the court below, and not to exceed £500. Within twenty-eight days of motion for leave to appeal.
NORTH-WEST TERRITORIES. *Remarks.*—Appeal direct to Privy Council, etc. (vide CANADA, *supra*).	Can. Acts, 49 Vict., Nos. 25, 50. Order in Council of July 30th, 1891 (see *North-West Territs. Gaz.*, vol. ix., p. 43).	Final judgment for sum above, or involving directly or indirectly claim to property or civil right amounting to or of value of, £300. From interlocutory judgment, by leave.	Fourteen days.	Execution may be stayed or not, appellant or respondent giving security as case may be. Appellant to give security not exceeding £500, in all cases. Security to be found within three months of motion for leave to appeal.
NOVA SCOTIA. *Remarks.*—Appeal direct to Privy Council, etc. (vide CANADA, *supra*). Where the judges differ, and are equally divided, a *pro formâ* judgment is to be deemed a judgment for the purposes of appeals. As to annexation of Cape Breton to Nova Scotia, see *In re Cape Breton Island* [1846], 5 Moo. P. C. 259.	Order in Council of March 20th, 1863. (Stat. R. and O. Rev., vol. iv., p. 362).	Final judgment for sum above, or involving directly or indirectly claim to property in civil right amounting to or of value of, £300, or questions whereby the rights of her Majesty, her heirs or successors may be bound; or (by leave of the court) from interlocutory judgment.	Fourteen days.	The court may direct judgment to be carried out, respondent giving good and sufficient security, or suspended. Appellant's security regulated by the court below, and not to exceed £500, within twenty-eight days of motion for leave to appeal.

CONDITIONS OF APPEAL TO PRIVY COUNCIL FROM INDIA, THE COLONIES, ETC. (*Continued*)—

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
ONTARIO (or UPPER CANADA). *Remarks.*—Appeal direct to Privy Council, etc. (vide CANADA, *supra*). As to practice on appeals to Supreme Court, see admirable notes, in Wheeler's *Confederation Law of Canada*, to s. 101 of B. N. A. Act, 1867, p. 399. Appeal from arbitrators as to disputed accounts between Dominion and Province under 54 Vict., No. 2, and (without being subject to conditions prescribed by Rev. Stats.) from judgment of courts to which constitutional question has been referred by Lieutenant-Governor under 53 Vict. (Ont.), No. 13.	Rev. Stats., Ont., 1897, p. 549.	Above $4000, or questions affecting the taking of any annual or other rent, customary or other duty, or any demand of a general or public nature. Also on financial matters (54 Vict. (Ont.), No. 2).	Fourteen days.	Not exceeding $2000. Execution stayed on security being perfected.
PRINCE EDWARD ISLAND. *Remarks.*—Appeal direct to Privy Council, etc. (vide CANADA, *supra*). In the Royal Instructions of Dec. 13th, 1838, the Governor was ordered to admit appeals (*a*) to himself in Council where the matter in question amounted to £300; (*b*) to the Queen in Council where it amounted to £500 (cp. *In re Cambridge* [1841], 3 Moo. P. C. 175; *In re Monckton* [1837], 1 Moo. P. C. 455; and in cases of fines, £100; Macpherson, *P. C. Prac., Appx.*, p. 113).				
QUEBEC (or LOWER CANADA). *Remarks.*—Appeal direct to Privy Council, etc. (vide CANADA, *supra*).	Code of Civil Procedure, Arts. 1178-82, and Rev. Stats., vol. ii., p. 743; and see now Rev. Code of Civil Procedure, 1897, introduced by 60 Vict. (Q.), No. 48; and cp. Wotherspoon's *Manual of Practice and Procedure*, p. 180.	From final judgment where sum in dispute exceeds £500; also where it relates to money payable to her Majesty, or matters by which future rights may be affected.	No time prescribed.	Good and sufficient security to prosecute appeal and to pay sum due and costs of appeal, unless no consent to execution of judgment, in which case only security for costs of appeal. Execution cannot be prevented after six months from date of allowance of appeal, unless appellant files certificate that appeal lodged.

Remarks.—*Statute Law of Cape of Good Hope* [1714-1853], p. 220: Griqualand West was incorporated with Cape Colony on Oct. 15th, 1880. See also SOUTH AFRICA: Van Zyl, *Jud. Pract. in South Africa*; *Van Breda* v. *Silberbauer* [1869], 6 Moo. P. C. N. S. 319; *Cook* v. *Sprigg* [1899], 15 T. L. R. 515.	4th, 1832, Arts. 50, 51.	or on claim to property or civil right amounting to or of value of, £500.	(see *Jones* v. *Cape Town Town Council*, 1895, 12 Cape S. C. 144).	cuted, respondent giving good and sufficient security, or suspended. In all cases appellant to give security, regulated as to amount by court below, within three months.
CENTRAL PROVINCES. *Remarks.*—From Court of Judicial Commissioner to Privy Council on same conditions as from BRITISH INDIA. See Act 10 of 1897, s. 3 (24), and Act 16 of 1885, s. 5.				
CEYLON. *Remarks.*—See Thomson's *Inst. Laws of Ceylon*; and as to law of Ceylon, *Lindsay* v. *Oriental Bank of Colombo* [1860], 13 Moo. P. C. 401; *Reg.* v. *Price*, 8 Moo. P. C. 203; *Le Mesurier* v. *Le Mesurier* [1894], App. Cas. 283; [1895], App. Cas. 517; article on "Application of European Law to Natives of Ceylon" (L. B. Clarence), in *Jour. Soc. Comp. Leg.*, vol. i., p. 227.	Charter, Feb. 18th, 1833 (Stat. R. and O. Rev., vol. viii., p. 416), and Ordinances No. 1 of 1889; No. 2 of 1889, ss. 779-90.	Final judgment for sum above, or on claim to property in civil right amounting to, Rs. 5000.	Fourteen days.	Judgment executed on security for restitution being given by respondent, appellant's security not exceeding Rs. 3000. Where subject-matter is immovable property, or stock etc., thereon, and judgment does not charge, affect, or relate to actual occupation, no security is to be demanded from either party; where judgment does so charge, etc., no greater security than necessary to secure its integrity.
CHANNEL ISLANDS. See GUERNSEY, JERSEY.				
CHINA. *Remarks.*—Appeal lies from provincial courts to Supreme Court at Shanghai against decision for sum, or on claim to property in civil right of value of, $250. For Order of 1865 see Stat. R. and O. Rev., vol. iii., pp. 333-96; see also *Hart* v. *Gumpach* [1872], L. R. 4 P. C. 439, and Order in Council of July 14th, 1899; *Lond. Gaz.*, 1899, p. 4417. But see JAPAN.	China *and Japan* Order in Council of March 9th, 1865; extended to Corea by China, *Japan*, and Corea Order in Council, 1884 (Stat. R. and O. Rev., vol. iii., p. 389).	Final decree of Supreme Court of Shanghai for sum, or on claim as to civil right, of the value of $2500; in other cases, even criminal, by leave of Supreme Court of Shanghai.	Fifteen days.	Execution of decree may be carried out, respondent giving security, or suspended. In all cases appellant to give security not exceeding $2500, within one month.
CONGO. See AFRICA.				

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
COORG. *Remarks.*—From Court of Judicial Commissioner to Privy Council on same terms as from BRITISH INDIA, Act. 10 of 1897, s. 3 (24); and Reg. II. of 1881, s. 8.				
COREA. See CHINA.				
CYPRUS. *Remarks.*—See Stat. R. and O. Rev., vol. iii., p. 412; also an interesting case in Privy Council as to law of Cyprus (*Parapano* v. *Happaz* [1894], App. Cas. 165). As to history of establishment of courts, etc., see High Commissioner's reports.	Order in Council of July 15th, 1881, confirmed by Order in Council of Nov. 30th, 1882. Cyprus Courts of Justice Order, 1882, Art. 41 (Stat. R. and O. Rev., vol. iii., p. 436).	From final judgment for sum of, or involving directly or indirectly claim to property in civil right of value of, £500. From interlocutory orders by leave of Supreme Court.	Fourteen days.	If sentence executed, respondent must find security. Appellant's security regulated by court below, not exceeding £500; within three months.
DOMINICA. See LEEWARD ISLANDS.				
EAST AFRICA PROTECTORATE. *Remarks.*—Appeal from Chief Native Court and from Cadi's Court to High Court for Protectorate, which sits at ZANZIBAR (*q.v.*) or Mombasa. And see AFRICA; ZANZIBAR; also article by Sir Arthur Hardinge in *Jour. Soc. Comp. Leg.*, N. S., vol. i., p. 1: "Legislative Methods in the Zanzibar and East Africa Protectorate"; East Africa Order in Council, 1897 (Stat. R. and O., 1897, p. 134, Hert. xx., p. 50). Regulations, 1897 (*ib.*, p. 74).				
EGYPT. *Remarks.*—The Ottoman Order in Council, 1873 (Stat. R. and O. Rev., vol. iii., p. 646), and Ottoman Dominions (Courts) Order in Council, 1895 (Stat. R. and O. Rev., 1895, p. 269), are repealed by Ottoman Order in Council, 1899, together with the other Ottoman Orders, and consolidated. The question of the Order of	Ottoman Order in Council 1899 (Stat. R. and O., 1899, No. 595), Arts. 132-35.	From final order of Supreme Court at Constantinople involving amount or value of £500.	Within prescribed time, or, if no time prescribed, fifteen days.	Appellant's security not exceeding £500, within one month. Execution may be carried out, respondent giving security, or suspended.

by Order in Council of [illegible], 1875 (Stat. R. and O. Rev., vol. iii., p. 690); and the Order of 1899 only applies to so much of Egypt as is north of the 22nd parallel of north latitude (*Lond. Gaz.*, Aug. 11th, 1889, p. 4949; Stat. R. and O., 1899, No. 595). Supreme Court may give leave to appeal in any case (Art. 133 [5]), and prerogative of Crown preserved (Art. 135). No appeal in criminal cases unless by special leave of Privy Council (Art. 62). See articles, "Egyptian Government and the Caisse de la Dette" (*Jour. Soc. Comp. Leg.*, vol. i., p. 386), "Judicial Reform in Egypt" (*ib.*, N. S., vol. i., p. 1).				
Falkland Islands. *Remarks.*—As to law, see *Falkland Islands Ordinances* and *Falkland Islands Co.* v. *Reg.*, 2 Moo. P. C. N. S. 266.	Ordinance No. 2 of 1898 (s. 25).	From judgment of Supreme Court for sum above £500.	Fourteen days.	Good and sufficient security by appellant; within three months. Execution may be carried out or stayed, respondent or appellant giving security as case may be.
Fiji Islands. *Remarks.*—See interesting appeal from Fiji, *McArthur* v. *Cornwall* [1892], App. Cas. 75.	Order in Council of Feb. 22nd, 1878. Pacific Ocean Order in Council 1893 (Stat. R. and O., 1893, pp. 312, 341).	From judgment of Supreme Court, either in exercise of municipal jurisdiction, or, as Court of Appeal under Pacific Ocean Order in Council, 1893, for sum of £500.	Fourteen days.	Within three months.
Gambia. *Remarks.*—From final judgment of Supreme Court of Sierra Leone (vide Order in Council of Nov. 24th, 1891, Stat. R. and. O., 1891 p. 24; and Sierra Leone, *infra*). Gambia Hinterland has been brought under the jurisdiction of the courts of Gambia by Order in Council of Nov. 23rd, 1893 (Stat. R. and O., 1893, p. 311).				
Gibraltar. See Morocco; also Sheriff's *Laws of Gibraltar*, 1890.	Supreme Court Consolidation Order in Council, 1888 (Sheriff's *Laws of Gibraltar*, pp. 512, 513, Stat. R. and O. Rev., vol. viii., p. 461), repealing Charter of Justice, Sept. 1st, 1830.	Judgment for sum above, or involving directly or indirectly claim to civil right, etc., equal to or more than, £300 (7500 pesetas): English coinage substituted by Ordinance No. 6 of 1898, in pursuance of Order in Council of Aug. 9th, 1898.	Fourteen days.	Execution carried out or suspended, respondent or appellant giving security as case may be. Appellant's security for prosecution of appeal to be found within three months.

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
GOLD COAST COLONY. *Remarks.*—By letters patent of July 24th, 1874, the Gold Coast and Lagos were erected into one colony as the Gold Coast Colony, the Supreme Court for the Gold Coast being the Supreme Court for the colony. By letters patent of Jan. 13th, 1886 (Stat. R. and O. Rev., vol. iv., p. 453), LAGOS (*q.v.*) was made a separate colony. As to Hinterland, see Order in Council of Dec. 29th, 1887 (Stat. R. and O. Rev., vol. iii., p. 52). See AFRICA. As to law, see *Gold Coast Ordinances*, Sarbah's *Fanti Customary Laws.*	Order in Council of Oct. 23rd, 1877 (Stat. R. and O. Rev., vol. iv., p. 327).	Final judgment or decree for sum above, or involving directly or indirectly claim to property or title amounting to or of value of, £500, or (by leave of Supreme Court) from interlocutory judgment.	Fourteen days.	Not more than £500 sterling; within three months. Execution may be carried out, respondent giving good and sufficient security, or suspended.
GOZO. See MALTA.				
GRENADA, GRENADINES. See WINDWARD ISLANDS.				
GRIQUALAND EAST. *Remarks.*—Appeal from Supreme Court of Cape of Good Hope on ordinary conditions (see CAPE OF GOOD HOPE, and Cape Act, No. 35, of 1896, s. 22). Griqualand East is within jurisdiction of Court of Eastern districts (No. 35 of 1896, s. 10).				
GRIQUALAND WEST. *Remarks.*—From Supreme Court of Cape on ordinary conditions (see CAPE OF GOOD HOPE, and Cape Act, No. 35, of 1896, s. 22). Appeal to Supreme Court from High Court of Griqualand on twenty-one days' notice. Appeal to be prosecuted within three months. Good and sufficient security (No. 35 of 1896, ss. 24, 26). As to practice, see Van Zyl, *Jud. Prac. in South*				

GUERNSEY (including ALDERNEY, HERM and JETHOU ISLANDS, and SARK). *Remarks.*—Appeal to be prosecuted within six months (Clark, *Col. Law*, p. 708). As to law, see Berry's *Hist. Guernsey*; 8 St. Tri., N. S., 311, 312*n*. The appeal from Alderney is through the Royal Court of Guernsey. Herm unsuccessfully attempted to assert its independence in 1837 (*Martyn* v. *McCullock*, 1837, 1 Moo. P. C. 308).	Orders in Council of May 13th, 1823, and (see Parl. Rep., 1834 [323]) Dec. 20th, 1825.	Realty, £10 sterling; personalty, £200 sterling.		
HERM. See GUERNSEY.				
HONG-KONG. *Remarks.*—Privy Council Blue Book, 1862, *Orders in Council respecting Appeals from the Colonies*, p. 10. As to jurisdiction of Supreme Court in China and formerly in Japan, see Order in Council of March 9th, 1865, ss. 159, 160, Hert. xii., p. 316. A revised code of civil procedure for Hong-Kong is being prepared by Chief Justice Sir J. W. Carrington. See JAPAN.	Instructions, Dec. 23rd, 1845.	From final judgment of Supreme Court for sum, or involving directly or indirectly title to property or civil right, above £500.	Fourteen days.	Appellant's security regulated by court below, not exceeding £300; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be. Where subject of litigation immovable property, and judgment does not charge, affect, or relate to actual occupation thereof, no security; where it does so charge, etc., only sufficient security to guarantee restitution free from damage.
ISLE OF MAN. *Remarks.*—Appeal must be prosecuted within six months (cp. 1 P. Wms. 329, and *A.-G. Isle of Man* v. *Mylchreest* [1879], 4 App. Cas. 294). See Mill, Stats. I. M., 245; Stow, *ib.*, 27.	Act of Tynwald, Aug. 11th, 1736, s. x. (14), proclaimed June 24th, 1737; and see Isle of Man Jud. Act, 1883, s. 34.	From all decrees of Staff of Government Division of High Court of Isle of Man. No amount fixed by statute; but £3 is said to be the appealable amount by customary law, unless some principle is involved, as in the case of appeal on the question whether tithe rent-charge was rateable to the Lunatic Asylums rate (*Ingram* v. *Drinkwater* [1875], 32 L. T. 746).[1]	Six months.	Appellant's security regulated by court below. Execution suspended during appeal.[1]

[1] I am indebted for this information to the kindness of Mr. George A. Ring, Attorney-General of the Isle of Man.—A. W. R.

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
JAMAICA. See BRITISH HONDURAS. *Remarks.*—See *Phillips* v. *Eyre* [1870], L. R. 6 Q. B. 1 (query whether a settled or conquered colony); Clark, *Col. Law*, 338.	Order in Council of April 14th, 1851 (Stat. R. and O. Rev., vol. iv., p. 334). Judicature Law, 1879, No. 24 of 1879.	Final judgment for sum above, or for claim to property in civil right amounting to or of value of, £300.	Fourteen days.	Execution may be carried out. respondent giving good and sufficient security, or suspended. Appellant's security regulated by court below, not exceeding £500. To be found within twenty-eight days of the motion to appeal. Where judges equally divided in opinion, *pro formâ* judgment sufficient for purposes of appeal.
JAPAN. *Remarks.*—The consular jurisdiction in Japan ceased to exist in August 1899 (see Order in Council of Oct. 7th, 1899, *Lond. Gaz.*, 1899, p. 6234), in virtue of Art. 20 of Treaty of July 16th, 1894, Hert. xix., p. 698. See CHINA; also articles by Mr. Okamura in *Jour. Soc. Comp. Leg.*, N. S., vol. i., p. 46, on "The Progress of the Judicial System of Japan," and by Mr. W. F. Craies, on "The Proposed Penal Code for Japan" (*ib.*, N. S., vol. i., p. 322).				
JERSEY. *Remarks.*—For laws, see *Recueil des Lois*; Le Geyt, *Lois, etc., de Jersey*; *Histories* of Falle and Le Quesne; *Falle* v. *Godfray* [1889], 14 App. Cas. 70. The Privy Council may grant special leave on petition (*doléance*) in cases not coming within conditions of Order in Council (see Parl. Rep., Jersey, 1860, p. 124, *ans.* 2873; and see Clark, *Col. Law*, 708 *n* [2]). As to special leave in criminal cases, see *Esnouf* v. *A.-G. for Jersey* [1883], 8 App. Cas. 304. See also valuable list of authorities as to Channel Islands, in 8 St. Tri., N. S., 311, 312 *n*.	Order in Council of Dec. 15th, 1679, recalling Order in Council of May 21st, 1679. Orders in Council of July 15th, 1835 (Cp. Parl. Rep., Jersey, 1860, p. liii. *Recueil des Lois*, vol. i., p. 214); June 13th, 1853 (*ib.*, vol. ii., p. 32); June 26th, 1873 (*ib.*, vol. iii., p. 80); July 14th, 1899 (*Du Parcq*, Jersey, 5, 99, 300).[1]	Real actions, £5 sterling per annum. Personal actions, above £200 sterling.[1]	Court must be moved at time of judgment, and appeal prosecuted within three months.	Regulated by court below; within eight days.

	See also Order in Council of May 19th, 1671 (Macph., *Privy Co. Prac.*, p. 103).			
JETHOU. See GUERNSEY.				
LABUAN. *Remarks.*—No rules. By 29 & 30 Vict., No. 115, s. 3, her Majesty was empowered to place the island under the government of the Straits Settlements. But this power has not been exercised. See, further, *Jour. Soc. Comp. Leg.*, vol. ii., p. 271; and BRITISH NORTH BORNEO, *supra*.				
LAGOS. See AFRICA: GOLD COAST COLONY. *Remarks.*—As to Lagos Hinterland, see Order in Council of Dec. 29th, 1887 (Stat. R. and O. Rev., vol. iii., p. 523).	Order in Council of July 5th, 1889 (Stat. R. and O. Rev., vol. iv., p. 337).	Final judgment or decree for sum above, or involving directly or indirectly claim to property or title amounting to or of value of, £500; or (by leave of Supreme Court) from interlocutory judgment.	Fourteen days.	Appellant's security not more than £500, within three months. Execution may be carried out, respondent giving good and sufficient security, or suspended.
LEEWARD ISLANDS. *Remarks.*—Appeal from interlocutory judgments by leave. Leeward Islands include Anguilla, Antigua, Dominica, Montserrat, St. Christopher, Nevis, and Virgin Islands.	West India Appeals Act, 1850, 13 & 14 Vict., No. 15, repealed by 52 & 53 Vict., No. 33. Order in Council of June 8th, 1854 (Stat. R. and O. Rev., vol. iv., p. 339). Privy Council Blue Book, 1862. See also Supreme Court Act, 1875; Supreme Court Act, 1880 (No. 2 of 1880, No. 1 of 1881); Supreme Court Act, 1884 (No. 15 of 1884); Supreme Court Act, 1887 (No. 20 of 1887). Order in Council of March 24th, 1880.	Final judgment for sum above, or involving directly or indirectly claim to property in civil right amounting to or of value of, £300.	Fourteen days.	Execution may be carried out, respondent giving security. Appellant's security regulated by court below, not exceeding £500, within twenty-eight days. Where judges equally divided, judgment *pro formâ* is to be deemed a judgment for purposes of appeal.

[1] I am indebted for this information to the kindness of Mr. A. Hilgrove Turner, Attorney-General of Jersey.—A. W. R.

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
MADAGASCAR. *Remarks.*—The British Government recognised the French *Protectorate* over Madagascar, but the rights and immunities enjoyed by British subjects in the island were not to be affected. See Declarations, Aug. 5th, 1890 (Hert. xviii., pp. 436, 438, and AFRICA *supra*). See interesting case of appeal from Madagascar to Mauritius (*Haggard* v. *Pelicier Frères* [1892], App. Cas. 61). Since August, 1896, however, Madagascar has been a French *colony*, and British subjects commorant therein are subject to French law. Her Majesty has no longer extra-territorial jurisdiction over British subjects and protected persons in the island. See AFRICA.				
MADRAS. See BRITISH INDIA.				
MALACCA. See STRAITS SETTLEMENTS.				
MALAY STATES. *Remarks.*—The native states of the Malay Peninsula are under British influence, and the governments of the local princes are administered under the advice of the resident agents of our Government. Four of these states form a federation called the Protected Malay States (*C. O. List*, 1899, p. 256; and Article, "Straits Settlements," in *Encyclo. Laws of England*. See also Hert. xviii., *Gen. Ind.*, *s. v.* "Malay States").				
MALTA and GOZO. *Remarks.*—*Camilleri* v. *Fleri* [1860], 5 Moo. P. C. 161. Cp. Clark, *Colon. Law*, p. 719; *Malta Ordins.*; and for interesting historical matter, *Dritto Municipale di Malta* [1843]; *Repertorio di Proclami* [1844], etc.; *Gera* v.	Order in Council of Dec. 18th, 1824; and cp. Order in Council of June 26th, 1873.	From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £1000.	Fourteen days.	Appellant's security regulated by court below; within one month. Execution may be carried out or suspended, respondent or appellant giving security as case may be.

MANITOBA. See CANADA.				
MASHONALAND and MATABELELAND. See SOUTH AFRICA.				
MAURITIUS. *Remarks.*—Cp. Clark, *Col. Law*, p. 594. Under the Orders in Council of Jan. 26th, 1874 (Stat. R. and O. Rev., vol. viii., p. 547), and Dec. 17th, 1888 (Stat. R. and O. Rev., vol. viii., p. 552), an appeal lies to Supreme Court of Mauritius from Court of Seychelles. As to Rodriguez, see Ordins. No. 6 of 1866 and No. 16 of 1890; see also AFRICA. As to appeals under French administration, see Rouillard's *Laws*, vol. i. As to law, see *Lang* v. *Reid* [1858], 12 Moo. P. C. 72; *H. M. Procureur-General* v. *Bruneau* [1866], L. R. 1 P. C. 169.	Orders in Council of April 13th, 1831, and Dec. 12th, 1894 (*Maur. Laws, Rev. I.*, 97).	From final judgment of Supreme Court for sum above, or involving directly or indirectly claim to property or civil right of value of, Rs. 10,000 (Order in Council of Dec. 12th, 1894; £1000 under Order in Council, April 13th, 1831).	Fourteen days.	Appellant's security within three months. Execution may be either carried out or suspended, respondent or appellant giving security as case may be.
MONTSERRAT. See LEEWARD ISLANDS.				
MOROCCO. *Remarks.*—Order in Council of Nov. 28th, 1889 (Stat. R. and O. Rev., vol. iii., p. 524). Appeal lies from decision of Supreme Court of Gibraltar under conditions above stated (see GIBRALTAR). Appeal lies from Court of Morocco to Supreme Court of Gibraltar where amount involved equal to or more than £50. Security not more than £100. Supreme Court of Gibraltar has original concurrent jurisdiction in certain cases (see *Reg.* v. *Spilsbury* [1898], 2 Q. B. 615; *Spilsbury* v. *Reg.* [1899], App. Cas. 392). No appeal to Privy Council in criminal cases without special leave (Order in Council, 1889, Art. 44).				
MUSCAT. *Remarks.*—Order in Council of Nov. 4th, 1867 (Stat. R. and O. Rev., vol. iii., p. 574). Appeal from British Consul to High Court of Bombay where sum at stake equal to $200. High Court of Bombay has concurrent jurisdiction in civil suits between British subjects (see Art. 25, and cp. BRITISH INDIA).				

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
NATAL. See SOUTH AFRICA, ZULULAND; *Natal Laws.*	Order in Council of July 19th, 1870 (Hert. xiii., p. 1191).	From final judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £500.	Fourteen days.	Appellant's security regulated by court below, not exceeding £500; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be. Where subject-matter is immovable property or stock, etc., thereon, and judgment does not charge, affect, or relate to actual occupation, no security is to be demanded from either party; where judgment does so charge, etc., no greater security than necessary to preserve its integrity.
NEVIS. See LEEWARD ISLANDS.				
NEW BRUNSWICK. See CANADA.				
NEWFOUNDLAND. See *Newfoundland Laws.*	Charter of Justice, Sept. 19th, 1825 (Stat. R. and O. Rev., vol. iv., pp. 351, 360).	From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £500.	Fourteen days.	Appellant's security regulated by court below; within three months. Execution may be carried out or suspended, respondent or appellant giving good and sufficient security as case may be.
NEW SOUTH WALES. See AUSTRALASIA:				

New Zealand. *Remarks.*—The Order in Council of Nov. 16th, 1871, regulating appeals will be found in Johnston's *New Zealand Court Prac.*, pp. 204, 206. Cp. *Bunny* v. *Judges of New Zealand* [1852], 15 Moo. P.C. 164. See interesting appeal, *Walker* v. *Baird* [1892], App. Cas. 491.	Orders in Council of Nov. 30th, 1864, and Nov. 16th, 1871.	From judgment for sum, or involving directly or indirectly claim to property or civil right amounting to or of value of, £500.	Fourteen clear days.	Appellant's security regulated by court below; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be.
Niger Coast Protectorate: Niger Territories. *Remarks.*—Rules are in course of preparation.				
North-West Provinces. See British India.				
North-West Territories. See Canada.				
Nova Scotia. See Canada.				
Nyassaland. Now British Central Africa (*q.v.*).				
Oil River Protectorate. See Africa.				
Ontario. See Canada.				
Ottoman Dominions. See Turkey.				
Oudh. *Remarks.*—Appeal from Judicial Commissioner's Court on same conditions as from British India (*q.v.*).				
Pacific Islands. See Western Pacific Islands: Fiji Islands.				
Penang (Prince of Wales Island). See Straits Settlements.				
Perim. *Remarks.*—Part of British India within 21 & 22 Vict., No. 106, and subject to Government of Bombay. Cp. *Queen-Empress* v. *Mangal Tekchand* [1886], 10 I. L. R. Bom. 258, 263, 274; and see Aden.				
Persia. *Remarks.*—From Court of Consul-General to Privy Council.	Order in Council of Dec. 13th, 1889 (Hert. xviii., pp. 945, 997, Stat. R. and O. Rev., vol. iii., p. 698).	Final judgment, etc., for sum or involving directly or indirectly claim to money, goods, property, or civil right equal to or more than, £500.	Fifteen days.	Execution may be carried out, respondent giving security, or suspended, appellant giving security. Appellant's security to prosecute appeal not more than £500.

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
PERSIAN COAST AND ISLANDS. *Remarks.*—From Court of Consul-General to High Court of Bombay on conditions prescribed by Indian law in regard to appeal from District Judge to High Court of Bombay. From Bombay High Court to Privy Council on conditions set out under BRITISH INDIA. The Persian Coasts and Islands Order in Council, 1889, was applied to Somaliland by Order in Council of 1889; and see Stat. R. and O., 1895, p. 271, and Ilbert, *Government of India*, p. 425. But the Order of 1889 has never been brought into operation. See also SOMALILAND.	Order in Council of Dec. 13th, 1889 (Hert. xviii., pp. 1024, 1033, Stat. R. and O. Rev., vol. iii., p. 796).			
PONDOLAND. *Remarks.*—Annexed to Cape Town. See Cape Act, No. 5, of 1894, and CAPE OF GOOD HOPE, and Cape Act, No. 35, of 1896, s. 22. Pondoland is within jurisdiction of Court of Eastern districts (*ib.*, s. 13). Appeal lies from Supreme Court of Cape on ordinary conditions.				
PRINCE EDWARD ISLAND. See CANADA.				
PRINCE OF WALES ISLAND (PENANG). See STRAITS SETTLEMENTS.				
PUNJAB. *Remarks.*—Appeal from Chief Court on same conditions as from BRITISH INDIA.				
QUEBEC. See CANADA.				
QUEENSLAND. See AUSTRALASIA: AUSTRALIA.				
RHODESIA. See SOUTH AFRICA.				
RODRIGUEZ. See MAURITIUS.				
ST. CHRISTOPHER. See LEEWARD ISLANDS.				

ST. HELENA. *Remarks.*—The Order in Council will be found in Stat. R. and O. Rev., vol. iv., pp. 369, 377; the Charter of Justice in *Parliamentary Papers*, 1857-8, No. 288.	Order in Council of Feb. 13th, 1839. Charter of Justice, 1857-58.	From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £500.	Fourteen days.	Regulated by court below; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be.
ST. LUCIA. See WINDWARD ISLANDS.				
ST. VINCENT. See WINDWARD ISLANDS. *Remarks.*—As to law of St. Lucia, see *Du Boulay* v. *Du Boulay* [1869], L. R. 2 P. C. 430. See Shepherd's *Col. Prac. in St. Vincent.*				
SARAWAK. *Remarks.*—No rules. As to the relations with Brunei and British North Borneo, see Agreements of May 12th, 1888 (Hert. xviii., p. 225), and Sept. 5th, 1888 (Hert. xviii., p. 227).				
SEYCHELLES. See MAURITIUS, and *Jour. Soc. Comp. Leg.*, vol. ii., p. 274.				
SHANGHAI. See CHINA.				
SIAM. *Remarks.*—Appeal lies to Supreme Court of Straits Settlements from District Court, or Judge of Straits Settlements Supreme Court, acting under the Order in Council of 1889, where sum, etc., involved amounts to £50 or upwards. Cp. Siam Order in Council, 1898 (*London Gazette*, March 8th, 1898, Stat. R. and O., 1898, p. 409), as to International Court at Chiengmai.	Siam Order in Council, 1889 (Stat. R. and O. Rev., vol. iii., p. 818).	From Supreme Court of Straits Settlements on judgment for sum, or involving directly or indirectly claim to civil right, etc., equal to or more than, £500.	Fifteen days.	Execution may be carried out or suspended, respondent or appellant, as case may be, giving security. In all cases appellant to give security not exceeding £500, within one month.
SIERRA LEONE. *Remarks.*—As to Hinterland, see Order in Council of Aug. 24th, 1895 (Stat. R. and O. Rev., 1895, p. 272), and No. 11 of 1897, and No. 16 of 1898, and No. 35 of 1898, ss. 14, 15.	[Order in Council of Feb. 26th, 1867 (Hert. xiii., p. 1085). See also Order in Council of Oct. 23rd, 1877 (Hert. xiv., p. 995).	Final judgment for sum above, or involving directly or indirectly claim to property or civil right amounting to or of value of, £300 (Charter of Justice, 1821, gives £400 as appealable amount). See Clark, *Col. Law*, at p. 532.	Fourteen days.	Execution may be carried out, respondent giving security, or suspended. Appellant's security regulated by court below, not exceeding £300, within three months.[1]]
SINGAPORE. See STRAITS SETTLEMENTS.				

[1] *Semble*, the conditions indicated in the Order in Council of February 26th, 1867, are not suspended by the Order in Council of October 23rd, 1877 (see Art. 4).

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
SOMALILAND. *Remarks.*—Under Order in Council of Oct. 7th, 1899 (*Lond. Gaz.*, 1899, p. 6235), Protectorate Court held before Consul-General is to be deemed the High Court for purposes of the applied Acts, as one of these Acts is the Indian Code of Civil Procedure (Act 14 of 1882). Presumably, therefore, appeals will be to Privy Council direct from Protectorate Court on same conditions as from BRITISH INDIA. See also PERSIAN COAST AND ISLANDS.				
SOUTH AFRICA. *Remarks.*—Limits of South Africa Order in Council are *parts of South Africa* bounded by British Bechuanaland, German Protectorate, Rivers Chobe and Zambesi, Portuguese Possessions, South Africa Republic. Courts of British Bechuanaland have jurisdiction. British Bechuanaland annexed to Cape by British Bechuanaland Annexation Act, 1895, Act 41 of 1895: appeal either to High Court of Griqualand or Supreme Court of Cape of Good Hope from Court of Resident Magistrate (s. 11). An appeal lies from High Court of Southern Rhodesia (High Court of Matabeleland abolished by Southern Rhodesia Order in Council of 1898, s. 78) to Supreme Court of Cape where sum at issue is above £100, and thence to Privy Council on conditions stated under CAPE OF GOOD HOPE (Southern Rhodesia Order in Council, 1898, *Lond. Gaz.*, 1898, p. 7675, Stat. R. and O., 1898, p. 385, revoking Order in Council of Oct. 20th, 1898, Stat. R. and O., 1898, p. 385; and Cape Act, No. 22, of 1898). Courts of Zululand have jurisdiction in Amatongaland (which was annexed to Zululand by letters patent of Nov. 30th, 1897, Stat. R. and	South Africa Order in Council, 1891 (Stat. R. and O., 1891, p. 295; Stat. R. and O., 1898, p. 385).			

O., 1897, p. 679; Zululand, itself being annexed by letters patent of Dec. 1st, 1897, Stat. R. and O., 1897, p. 680, to Natal); and appeals come from Zululand through Natal (Order in Council of June 29th, 1896, Stat. R. and O., 1896, p. 117).				
South Australia. See Australasia: Australia.				
Southern Rhodesia. See South Africa.				
Straits Settlements. *Remarks.*—Including Singapore, Malacca, Prince of Wales Island or Penang. As to history of Straits Settlements, see *Neo* v. *Neo* [1875], L. R. 6 P. C. 381, p. 392; see also Malay States: Siam.	Civil Appeals Ordinance, 1893, No. 2 of 1893, Part IV.	From final judgment or order of Court of Appeal for sum equal to or above $2500, or from interlocutory judgment in case certified as fit one for appeal.	Petition to Court of Appeal, or (Civil Appeals Ordinance, 1895, No. 14 of 1895) to Supreme Court if Court of Appeal not sitting; must be presented within six, or, by leave, within twelve months.	Regulated by court below, not exceeding $2000. Execution may be carried out or suspended, respondent or appellant giving security as case may be.
Tasmania (Van Diemen's Land). *Remarks.*—See Stat. R. and O. Rev., vol. iv., p. 382, for Charter of Justice. See also Australasia.	Charter of Justice, March 4th, 1831.	From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £1000.	Fourteen days.	Appellant's security regulated by court below; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be.
Tembuland. *Remarks.*—Within jurisdiction of Court of Eastern districts in Cape Colony (see Cape Act, No. 35, of 1896, s. 13). See, for conditions of appeal, Cape of Good Hope; also South Africa.				
Tobago. See Trinidad and Tobago.				
Transkeian Territories. *Remarks.*—Within jurisdiction of Court of Eastern districts in Cape Colony (see Cape Act, No. 35, of 1896, s. 13). See, for conditions of appeal, Cape of Good Hope; also South Africa, and Cape Act, No. 41, of 1898.				

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
TRINIDAD AND TOBAGO. *Remarks.*—See Judicature Ordinance, 1879, Judicature (Tobago) Ordinance, 1898 (*Jour. Soc. Comp. Leg.*, vol. ii., p. 291).	Orders in Council of April 23rd, 1831 (*repealed by Ordin. No. 3 of* 1881), and June 20th, 1831.	Judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £500.	Fourteen days.	Appellant's security regulated by court below, not exceeding £300. Execution may be carried out or suspended, respondent or appellant giving security as case may be.
TURKEY. *Remarks.*—The Ottoman Order in Council, 1873 (Stat. R. and O. Rev., vol. iii., p. 646), and Ottoman Dominions (Courts) Order in Council, 1895 (Stat. R. and O., 1895, p. 269), were repealed by Ottoman Order in Council, 1899, together with the other Ottoman orders, and consolidated (*Lond. Gaz.*, Aug. 11th, 1899, p. 4949, Stat. R. and O., 1899, No. 595). But see EGYPT. Supreme Court may give leave to appeal in any case (Art. 133 [5]), and prerogative of Crown preserved (Art. 135). No appeal in criminal cases unless by special leave of Privy Council (Art. 62).	Ottoman Order in Council, 1899, Arts. 133-135.	From final order of Supreme Court at Constantinople involving amount or value of £500.	Within prescribed time, or, if no time prescribed, fifteen days.	Appellant's security not exceeding £500; within one month. Execution may be carried out, respondent giving security, or suspended.
TURKS AND CAICOS ISLANDS. *Remarks.*—Appeal lies from Supreme Court of Turks and Caicos to Court of Chancery, Jamaica, and thence to Privy Council on conditions stated under JAMAICA. As to the conditions of appeal from Turks and Caicos Islands to Jamaica, see Ordinance No. 1 of 1876, ss. 41, 42; and cp. Supreme Court Ordinance, 1885, No. 5 of 1885. No appealable amount fixed. Limit of time thirty days. Security to prosecute appeal within nine months. Execution stayed on appellant giving security.				
VANCOUVER ISLAND. See CANADA: BRITISH COLUMBIA.				

VICTORIA. See AUSTRALASIA: AUSTRALIA.				
VIRGIN ISLANDS. See LEEWARD ISLANDS.				
WEST AFRICA SETTLEMENTS. *Remarks.*—In 1821, on the abolition of the African Company, the British possessions in that part of the world were united to form one colony. The GOLD COAST, LAGOS, etc., have since been placed under separate governments. A new government of the West African Settlements (SIERRA LEONE and GAMBIA) was formed in 1874, but the plan of grouping these settlements has now been abandoned (*Encyclo. Laws of Eng.*, vol. xii., p. 580).				
WESTERN AUSTRALIA. See AUSTRALASIA: AUSTRALIA.				
WESTERN PACIFIC ISLANDS. *Remarks.*—Including Friendly Navigators (subject to Samoa Convention of June 14th, 1889), Union, Phœnix, Ellice, Gilbert, Solomon (so far as not German), and Santa Cruz Islands (Pacific Order in Council, 1893, Stat. R. and O., 1893, at p. 318). See FIJI ISLANDS.				
WEST INDIES. See BAHAMA ISLANDS, LEEWARD ISLANDS, WINDWARD ISLANDS, etc. *Remarks.*—As to history of West Indian Courts, see *Reports of West Indian Commissioners.*				
WINDWARD ISLANDS. *Remarks.*—Windward Islands include Barbados, Grenada, the Grenadines, St. Vincent, St. Lucia. A Court of Appeal for the Windward Islands was established under 13 & 14 Vict., No. 33, repealed by 52 & 53 Vict., No. 33, with saving of jurisdiction created thereunder. Legislation is contemplated with a view to limiting the right of appeal from the different islands to the Court of Appeal in interlocutory cases.	Orders in Council of March 3rd, 1859, and April 20th, 1883 (Stat. R. and O. Rev., vol. iv., pp. 396, 398, 400).	From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £300.	Fourteen days.	Appellant's security regulated by court below, not exceeding £500; within twenty-eight days. Execution may be carried out or suspended, respondent or appellant giving security as case may be. There is no clause in the Orders in Council providing for entry of *pro formâ* judgment where judges equally divided (as, *e.g.*, in LEEWARD ISLANDS), because

Colony, Possession, etc.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
WINDWARD ISLANDS (*continued*)—				by the legislation of the various islands coming within the group, where there is such a division of opinion the judgment appealed against is deemed to be affirmed (Order in Council of April 20th, 1883).
WITU PROTECTORATE. See ZANZIBAR.				
ZAMBESI (BRITISH SPHERE NORTH OF). See AFRICA.				
ZANZIBAR. *Remarks.*—Appeal from Court of Zanzibar to High Court of Bombay, and thence on usual conditions (see BRITISH INDIA) to Privy Council. Cp. Zanzibar Order in Council, 1897, s. 29 (Stat. R. and O., 1897, p. 159); East Africa Order in Council, 1897 (*ib.*, p. 134); Order in Council of Nov. 29th, 1884 (Stat. R. and O. Rev., vol. iii., p. 865). See EAST AFRICA PROTECTORATE. Cross appeals are pending before Privy Council, raising issue as to whether direct appeal lies from Court of Zanzibar to Privy Council. See, further, article by Sir Arthur Hardinge in *Jour. Soc. Comp. Leg.*, N.S., vol. i., p. 1, on "Legislative Methods in the Zanzibar and East Africa Protectorates," and p. 7 as to Witu Protectorate.				
ZULULAND. *Remarks.*—See SOUTH AFRICA; also Act No. 46 of 1898, extending jurisdiction of Supreme Court of Natal to Zululand; Courts Act, 1898, Act No. 49 of 1898, clauses 57, *et seq.*; Supreme Court Act, 1896, No. 39 of 1896.				

INTERNATIONAL LAW ASSOCIATION.

CONFERENCE AT BUFFALO.

[*Contributed by* T. G. Carver, Esq., Q.C.]

The Conference of the International Law Association held at Buffalo on August 31st and September 1st and 2nd last had some special features of interest. One of these was that it was held at Buffalo in the State of New York on the invitation of the American Bar Association, and in connection with their annual meeting, which was held at the same place on the preceding three days. It is needless to say that the members of the Conference were received with great kindness and hospitality by those of the American Bar Association who were gathered at Buffalo. Especially that was true with regard to the members of the Erie County Bar, who were entertainers of both Associations. The meeting was an opportunity of becoming acquainted with members of the American Bar, collected from all or most of the States, which was of great interest to those who crossed the Atlantic to attend the Conference.

The proceedings of the two Associations were of course distinct; but on the one hand addresses were given to the Bar Association by Mr. Justice Kennedy and Mr. Joseph Walton, Q.C., and on the other hand a considerable number of influential men of the American Bar attended, and materially assisted, the proceedings of the International Law Association. These addresses—by Mr. Justice Kennedy on "The Theory of the State Punishment of Crime," and by Mr. Walton on "The History of Legal Studies in England"—were heard with unmistakable interest and admiration; and they were well deserving of it. The elevation of tone and purpose, the fulness of treatment, and the eloquence and nobility of language of Mr. Justice Kennedy's paper made a marked impression; while Mr. Walton's excellent and quaint account of the beginnings of the Common Law as we know it, of the study of it in the Inns of Court, and of the decadence of that study, were of great interest to members of the English-speaking legal professions on both sides of the seas.

Turning, however, to the work of the International Law Association itself, papers of interest were read or presented upon "International Arbitration," "Immunity of Private Property at Sea during War," "The

Harter Act," "Foreign Judgments," "Maritime Liens," "The Rhodian Law," "Domicil as the Foundation of Jurisdiction," and "Law in Relation to Subject People." A committee which had been appointed to report upon a scheme for an international tribunal presented a scheme of rules for such a tribunal. Resolutions were passed congratulatory of the progress made on the subject at the Hague Conference, and a new committee was appointed to consider and report upon the provisions of the international conventions there arranged.

On the subject of immunity of private property at sea an interesting discussion had been looked for. Papers taking opposite views, by Mr. T. Barclay of Paris and Mr. C. H. Butler of New York, were read; but time for discussion failed; and all that was done was the appointment of a committee to report upon the subject, with a view to its consideration at a conference which it is hoped to hold next year in France.

The one subject upon which new, and it may be hoped practically useful work was done was that of the conflicts in marine insurance law. A scheme for promoting uniformity in the law governing policies of insurance was brought forward by the present writer, and gave rise to a valuable discussion and to the passing of resolutions which it is hoped may prove to be of practical importance.

The object sought is to frame a series of rules upon those questions of marine insurance law on which differences are found in the systems in force in the important maritime states, and to so frame them that they may commend themselves to business men as suitable for incorporation in their insurance contracts. The effect of such rules, so used, would be to put insurance contracts wherever made upon practically one and the same basis of law. Policies of insurance covering portions of one subject-matter, say upon a ship, or upon a cargo, or series of shipments of produce, cannot conveniently be made under varying systems of law. Unless, therefore, some expedient is found for bringing policies made in different countries on to the same platform, it is not possible to regard the insurers in different countries as forming one insurance market. The hope is that an expedient for this purpose suitable for general use may be supplied, and at the same time that, by taking the best ideas of the various systems of law, a body of rules better than any which exists may be formulated upon the points of conflict. On the present occasion resolutions were proposed to the Conference dealing with certain branches of the subject upon which legal conflicts of serious practical importance arise. These were—

(1) Constructive total losses.
(2) Deductions new for old in cases of particular average of ship.
(3) Effects of unseaworthiness, and of negligence of the assured or his servants or agents.
(4) Double insurances.

Upon these matters thirteen resolutions were submitted as to the

principles which it would be best to adopt; and a draft of rules to carry out those principles was presented. Those resolutions were all adopted by the Conference, with the exception of the first three, which were postponed, as shall presently be explained. They were as follows:

Marine Insurance Resolutions.

1. *Constructive Total Losses.*

1. That, in cases of damage, the test of constructive total loss of ship should depend upon whether the whole cost of recovering her and making her fit for the same service as before would exceed her value when recovered and repaired.

2. That, in case of damage, a constructive total loss of cargo should be allowed when, and only when—

(1) Owing to perils insured against it cannot be carried forward to the destination, or if so carried would not arrive in specie; or

(2) Owing to perils insured against, the carrying ship cannot complete the voyage with the goods, and the shipowner does not forward them, and they can only be brought to the destination by incurring expenses of recovering, conditioning, and forwarding, which would exceed their gross market value on arrival, less expenses of selling.

3. That the right to claim payment of a total loss should depend upon the position and condition of the ship or cargo at the time of giving notice of abandonment, or at the time of the event happening which has made notice of abandonment unnecessary. The estimate of whether ship or cargo is a constructive total loss should be with reference to the apparent and probable circumstances at the time above defined.

4. That the right of the insurer to the salvage, upon payment of a total loss, should relate back to the time of the casualty which caused the loss.

5. That freight earned by the ship by completing an insured voyage after transfer to the insurer should be apportioned between the assured and the insurer in proportion to the distances run by the ship in earning that freight before and after the casualty.

6. That an insurer of freight who insures against partial loss should indemnify the assured in respect of freight lost by him owing to a constructive total loss of ship, although the whole freight may have been earned by the ship after transfer to the insurer of ship.

2. *Particular Average of Ship.*

7. The deductions from the cost of repairs in respect of new for old, for ascertaining the amount of a partial loss of ship, should be those allowed by Rule XIII. of the York-Antwerp Rules of General Average.

3. *Seaworthiness and Negligence.*

8. That in any insurance of ship, or of any interest dependent upon ship, the assured (subject to express agreement) should be considered to warrant as follows:

(1) That where the insurance first attaches in port, all reasonable care has been taken to make the ship then in a fit condition to lie there.

(2) That all reasonable care will be taken to make the ship fit and properly manned, equipped, and documented for her voyage on each sailing from any port during the currency of the insurance: provided that

where the voyage includes more than one stage it will suffice that care be taken to make the ship fit and properly manned, equipped, and documented at the beginning of each stage for that stage.

9. That the insurer should not be liable for any loss consequent upon a breach of the warranty stated in 8, although proximately caused by a peril insured against; but that the insurance should not be conditional upon performance of that warranty and should not be invalidated by a breach of it.

10. That no other warranty of seaworthiness should be implied in insurance of ship or interest dependent upon ship; nor should any such warranty be implied upon an insurance of cargo.

11. That subject to the warranty stated in 8 an insurer should be liable for any loss caused proximately by a peril insured against, although brought about or contributed to by neglect of the assured, or by neglect or wilful act of his servants or agents, or by an inherent vice or weakness of nature, or unsoundness in condition of the thing insured.

4. *Double Insurance.*

12. That, in cases of double insurance, the insured may recover in respect of a loss under any of the policies covering it, in any order, unless he has already received indemnity for the loss as estimated upon the valuation in that policy; all the policies being treated as effectual, and the insurers being entitled to contributions *inter se.*

13. That the assured should not be entitled to return of premiums on the ground of double insurance where the risk has attached.

The proposals which gave rise to most discussion were those expressed in the first two resolutions, as to the test for constructive total loss in cases of damage to ship or cargo. The tests proposed are those of English law, and differ from the rules of continental Europe and from those adopted in the United States.

The history of the matter was partly traced in the paper read, with a view to showing that the French Code, and those codes which have followed it, are based upon early ideas that in cases of serious disaster (*sinistre majeur*) the assured should be allowed to abandon his adventure with its difficulties to his insurer, and claim payment of the amount insured in full, without enquiring whether there has really been, in effect, a total loss in the particular case; whereas the law of England, developed during the last one hundred and fifty years, with reference to the methods and needs of modern business, has rejected the arbitrary elements in this older system, and requires that the thing insured shall really be for practical purposes lost before the assured can claim to treat it so.

The French Code (Art. 369), for example, following Art. 46 of the Ordonnance of 1681, allows abandonment in cases of shipwreck (*naufrage*) or of stranding with breaking (*échouement avec bris*); and the right of the assured to abandon to his insurer may turn upon whether the accident which has befallen the ship comes within one of these descriptions, regardless of the actual effect of the accident upon the thing insured. Thus, if the ship

has suffered *naufrage*, it may be abandoned without enquiry into the extent of the damage; so also may the cargo on board, although that may have suffered little or no injury.

Now in America the more modern English idea of "Constructive Total Loss" has been adopted, as against the continental idea of a right to abandon in certain defined cases of disaster; and yet the meaning and logical force of the idea has been missed. The facts of the particular case are looked at; but if they show that the thing insured has been *half lost*, the assured is allowed to treat the loss as total.

The history of this is curious. *Park on Insurance* was a book of great authority in the courts of the United States at the end of the last and the beginning of the present century; and Park, citing a passage in *Le Guidon* (a French treatise of the sixteenth century), laid it down negatively that if "the damage sustained shall be found, upon computation, not to amount to a moiety of the value, the owner shall not be allowed to abandon" (7th ed., p. 231).

It seems clear from the judgments of the Supreme Court, delivered by Story, J., that it was from Park and *Le Guidon* that the American rule of half damage was derived.[1]

But though a definite rule of law was thus established, under which a loss of one half became a "technical" total loss, it was not, as stated by the courts, found convenient by American underwriters. The comparison, under the rule of law laid down in the case of ships, was to be between the full cost of repairs (without deduction of thirds, new for old) and half the repaired value of the ship. To modify this, clauses were and are still introduced into the American policies, with the effect of requiring the comparison to be between the cost of repairs (after deductions, new for old) and half the *original* value of the ship as shown by the policy valuation.

It seems impossible to trace any principle in the rule thus practically established; and to describe it as a test of constructive total loss is really to deprive that phrase of logical meaning, and to spoil the valuable idea which it has in our law expressed. In truth it creates a fictitious, not a constructive total loss.

On the other hand, the test thus adopted in American policies as distinguished from American law approaches to the alternative test of the right to abandon (in case of ships) found in the French and other continental codes, which allow the assured to abandon where the damage suffered amounts to *three-fourths* of the former value of the ship. If thirds were deducted from the whole cost of *recovery and repair*, the comparison of that cost so reduced with half the original value would be equivalent to a comparison of the gross cost of recovery and repair with three-fourths of that original value. But in fact it is not true that thirds are deducted

[1] *Marcardier* v. *Chesapeake Insurance Company* [1814], 8 Cranch 39; *Peele* v. *Merchants Insurance Company* [1822], 3 Mason 27; Kent's *Comm.*, vol. iii., p. 329.

(in allowing for new for old) from the whole or nearly the whole of the cost of repairs, more especially in the case of iron and steel ships; and they ought not to be deducted at all from the cost of *recovering* the ship. The rules are not therefore really in agreement.

Moreover, the rule allowing abandonment in the case of three-fourths damage has the same arbitrary or fictitious character as that which allows it in the case of half damage. The English rule has the advantage of reality and accordance with the facts; it is free from fictions, it fits in with the other legal consequences of the facts, it keeps in view the principle that insurance means indemnity, and it corresponds best with modern modes of insurance. Illustrations of the difficulties to which other rules lead—*e.g.* in cases of insurance free of particular average, or against total loss only—are afforded by the American law reports.

However, in the discussion which took place upon this matter the United States members of the Association who spoke were not in favour of adopting the English rule. But no vote was taken, as it was thought better to have the matter more fully considered before a decision was come to, and it was accordingly referred to a committee representing both sides of the Atlantic, who are expected to report to a conference which it is proposed to hold next year.

Another point in the law as to constructive total loss was as to *when* the test ought to be applied. Here it was proposed to apply the rule which obtains in the United States and on the continent of Europe—*viz.* that the matter should be tested as at the time of notice of abandonment being given; this, as against the English rule, which requires the test to be at the time of commencing legal proceedings against the insurer. The consistent application of the test at any definite time is beset with several difficulties, and the questions which arise are not at all clearly settled. The principle was stated in Resolution 3; but the working out only appeared in the draft rules, and remains to be considered hereafter.

Also, it was proposed (Resolution 5) to adopt the United States rule as to apportioning freight earned by the ship when she completes her voyage after a constructive total loss has occurred, as against the English rule which gives the whole of such freight to the abandonees of the ship; and, further (Resolution 6), to adopt the United States rule, that the freight underwriter should, in such a case, indemnify the shipowner against his loss of freight, notwithstanding that the whole freight may have been earned after the abandonment—a fact which, under English law, would relieve the insurer.

Another topic of much importance on which proposals were made was the effect of unseaworthiness on the liability of the insurer. On this subject there are wide differences between the rules of continental Europe and those of Great Britain and the United States.

On the Continent the fact of unseaworthiness does not invalidate the

policy; seaworthiness is not a condition of the policy attaching. In England and in the United States, on the contrary, seaworthiness at the time of sailing, in the case of a voyage policy, is a condition. If not satisfied, the underwriter is not liable for a loss which may happen, although by a peril insured against, and although the loss may have no connection with the unseaworthy state. On the other hand, there is in England no warranty of seaworthiness at all in *time* policies, nor any obligation on the assured as against his underwriter under such a policy to take care that the ship be made fit for her voyage; nor is there any such obligation in voyage policies except at the first port of departure.

The law of the United States corrects some of these defects. It applies the warranty to time policies as well as to voyage policies, though it seems doubtful whether its application is at the last port of sailing *before* the policy date, or at the next port *after*. Also, the United States law appears to require that reasonable care be taken to make the ship fit at each port of departure during the currency of the policy.

And this, speaking generally, seems to be true also on the continent of Europe. In the French, Belgian, and Dutch codes there are no specific provisions with regard to seaworthiness; but in France (352), Belgium (183), and Holland (276), the underwriter is not liable for losses caused by the act or default of the shipowner or his agents (other than, generally, the master or crew), nor for losses which happen owing to inherent defects in the ship. And under the German Code (825) it is expressly provided that in the case of insurances of ship or freight the underwriter is not to be liable for losses incurred in consequence of the vessel having been sent to sea unseaworthy.

The proposals (Resolutions 8-10) which were made presented a compromise among these systems. They provide that in all insurances of ships, whether for a voyage or for time, there shall be an obligation on the assured to have reasonable care taken to make the ship fit for her voyage,—not an absolute warranty of fitness, but an obligation to have care taken,—and that this shall attach upon each sailing during the currency of the insurance; and that underwriters shall not be liable for losses which may happen in consequence of any breach of that obligation; but, on the other hand, that no such breach shall have the effect of destroying the validity of the policy as an insurance against other losses. Also it was proposed that no warranty or obligation of the kind should be implied in policies on cargo. If the assured on cargo is to warrant the fitness of the ship, that should be done by express contract.

It will be noted that these were proposals for wide changes in the rules as they stand at present. They were, however, adopted as a fair compromise by the Conference. No disagreement with them was expressed by any speaker; and though Mr. Benedict, of New York, urged that it would be well to take further time for consideration, and for that purpose moved that they

be referred to the Committee appointed to consider the first three resolutions, the Conference was not of that opinion, and adopted them there and then.

The rules so adopted are calculated to give, in England at any rate, very considerably more protection to underwriters on ships than they have at present, and at the same time to mitigate in many cases the needlessly severe operation of the law as it stands.

The next Resolution (11) was on the effect of negligence of the assured or his servants upon the liability of the underwriter; and was proposed with a view to covering the difference between the continental rules and those of England and the United States upon the point. With us, and in the United States, the underwriter is liable for a loss proximately caused by a peril insured against, although that may have been brought into operation by negligence. On the Continent, speaking generally, that is not so if the negligence was on the part of the assured or his servants; except that where the insurance is against "barratry," among other perils, that is considered to include careless acts and neglect of the master and crew; giving the word a widely different meaning from that attached to it here and in America, where it covers only fraudulent and wilfully illegal acts. The resolution proposed that the rule of looking to the proximate cause only should be followed in all cases except those in which the peril proximately causing the loss has been brought into operation by a wilful act of the assured himself. This would be subject to the rule as to the effect of unseaworthiness already described. But apart from that, the resolution makes the underwriter liable to pay for all losses proximately caused by perils insured against, although there may have been negligence of the assured or his servants, or wilful misconduct of his servants, or defect in the thing insured.

It seems plain that a set of insurance rules which would leave the assured without indemnity against losses conduced to by mistakes or neglects would not meet his need for insurance, and so would be without practical value. Mistakes, neglects, and careless acts are ordinary incidents of maritime adventures; they become of serious moment owing to the perils by which such adventures are beset, and the object of marine insurance is to get rid of the risks from those perils.

The resolution was adopted by the Conference without any dissentient voice.

The remaining subject dealt with by the resolutions is that of double insurances. Here, again, a wide difference of laws exists, which must be bridged over if insurances of the same subject-matter are to be done indifferently in several countries at the same time.

In England all insurances are treated as valid whether the value of the thing insured is covered once or more than once. The assured is allowed to claim under any of the policies in any order, but must only

recover altogether the value of the thing insured once. When the amounts insured exceed that value, the insurers bear the loss, *inter se*, rateably according to their several liabilities, and this is adjusted by making contributions.

On the continent of Europe and in America, on the contrary, the principle adopted is that, when the full value of the assured's interest has once been covered, any subsequent insurances are made without interest, and are invalid—see France (334, 359), Holland (277), Germany (772). Provision is made, however, in some of the codes—*e.g.* Germany (793), Holland (280)—for allowing a second insurance to be made, if it be expressly made on the terms that the assured shall under it claim only what cannot be recovered under the first insurances of the same interest.

Insurance twice over is done sometimes by mistake, sometimes for greater caution against insolvency of underwriters. It was urged that there is nothing wrong or against public policy in such insurances, and that contracts should not be treated as invalid unless serious practical reasons can be given for so doing.

This view was taken by the Conference; and the resolutions in favour of the English view of the subject were adopted without a dissentient voice. The American members spoke strongly in support of them.

On the whole, it may be said that there is ground for hopefulness that a working scheme may be achieved for bringing insurances in different countries into line with one another. The work done at Buffalo is an important step in that direction. The unanimity shown was remarkable; and though upon the important question of constructive total loss an agreement could not then be come to, it may be expected that further consideration and discussion will bring about an agreement of views on that subject also. Strong interest in the subject was shown by the American members, and there was an unmistakable desire to arrive at an agreement.

The views of the continental members can hardly be said to have been so far at all expressed. We are likely to hear them during the course of the next year; and we may hope that the interest and desire to arrive at a workable arrangement on this subject which was shown at Buffalo will also characterise the next conference of the Association.

ABBREVIATION OF INDICTMENTS IN INDIA.

[*Contributed by* Dr. Courtney Kenny.]

Under the Indian Code of Criminal Procedure, 1882, charges against accused persons are stated with a brevity which is in striking contrast with the forms of indictment once employed in England; and which offers some features worthy of imitation here, even at the present day. The rules which make this brevity possible will be found in ss. 221–240 of the Code, and are based upon clauses originally drafted by Sir James Stephen for an Act of 1872.

Methods of Simplification.—They are of two kinds. Some aim at simplifying the indictment as a whole by lessening the need for loading it with a multiplicity of counts; others aim at simplifying each individual count by lessening the need for loading it with a multiplicity of details. Of this latter kind of rules, three are important. They respectively concern the nature of the crime, its essential conditions, and the details of the particular occasion.

Description of Crime.—As regards the description which the "charge" (to use the technical Indian name) must give of the nature of the crime, brevity is facilitated in many cases by the rule established in s. 221 that "If the law which creates the offence gives it any specific name, the offence may be described by that name only." Hence, as is shown by the forms scheduled to the Code, the nature of a prisoner's guilt is stated with sufficient technical minuteness if it be simply alleged that he "committed theft," or "committed dacoity," or "robbed A," or "committed murder by causing the death of A," or that he "waged war against the Queen." There is a noteworthy difference between the last brief words and the copiousness of a corresponding allegation recommended for present use in England by an accepted contemporary text-book like Archbold's *Criminal Pleading*; which avers that the prisoner, "not regarding the duty of his allegiance, nor having the fear of God in his heart, but being moved and seduced by the instigation of the devil as a false traitor against our said lady the Queen, and wholly withdrawing the allegiance, fidelity, and obedience which every true and faithful subject of our said lady the Queen should and of right ought to bear towards our said lady the Queen, together with divers other false traitors armed and arrayed in a warlike manner—that is to say, with guns, muskets, blunderbusses, pistols, swords, bayonets, pikes, and other weapons—being

then unlawfully, maliciously, and traitorously assembled and gathered together against our said lady the Queen, most wickedly, maliciously, and traitorously did levy and make war against our said lady the Queen within this realm." Or to take a simpler and more commonplace instance, the Indian charge "he robbed A" is much briefer than Archbold's "he in and upon A feloniously did make an assault, and him the said A in bodily fear and danger of his life then feloniously did put, and the moneys of the said A from the person and against the will of the said A then feloniously and violently did steal, take, and carry away."

Ingredients of Offence.—Again, with respect to the conditions essential to the crime, India does not follow the English doctrine that an indictment must set out with precision all the ingredients of the offence charged, and must, for instance, show negatively that the prisoner does not come within the benefit of any exceptions contained in the statutory clause which created the offence. S. 221 of the Code provides that, "The fact that the charge is made is equivalent to a statement that every legal condition, required by law to constitute the offence charged, was fulfilled in the particular case." This rule disposes of such cases as *R.* v. *Cox*, 1 C. and K. 494, where an indictment for stealing "three eggs" was held to be bad, because of its not showing that they were the eggs of some tame bird and therefore legally capable of being stolen.

Particulars.—Finally, as regards the details of the particular occasion which is in question, India does not insist, as the Common Law did, upon (certainty to a certain intent in general), but only requires (s. 222) that the charge shall disclose to the prisoner so much as is "reasonably sufficient" to give him notice of the matter which he is accused of. No greater minuteness than this is necessary in specifying even the person against whom, the place where, the thing upon which, and the time when, the offence was committed; and thus "*on* or *about*" a specified day appears to be the customary formula for charges. And as regards the manner in which the offence has been committed, this (s. 223) need not be stated at all, if the other particulars given in the charge are sufficient to enable the prisoner to know what accusation he has to meet. Hence it is unnecessary in cases of murder to show how the killing was effected. The same laxity prevails in England now (24 & 25 Vict., No. 100, s. 6); but the Common Law required that the instrument should specify the particular portion of the victim's body which was injured, and also the means of death. Hence, if the means were uncertain, a series of counts had to be introduced, each alleging the death to have been caused in a different way; so that an indictment for a single act of murder has been known to involve the insertion of thirty-five counts, all of them simultaneously sworn to by a Grand Jury as true, yet all except one of them necessarily false. Under the Indian rule it could rarely be necessary in cases of theft to specify the manner in which the crime was committed; though in the vaguer crime of "cheating" it would usually be quite needful, just as a charge of giving

false evidence would be too vague unless it set out the particular statement which is alleged to have been mendacious.

Alternative Charges.—If we now return from the rules affecting the individual counts (or, in the Indian phrase, "heads") to those which concern the charge as a whole, we shall find that brevity is secured by provisions which render it possible for the committing magistrate to frame his charge in an alternative form, and which make the single accusation of a major crime as efficacious as if counts for minor cognate ones had been added (s. 238), and which enable the court that tries the charge to disregard some errors in it (s. 225) and to amend others (s. 227). Let us deal with each of these provisions separately.

(*a*) The effect of ss. 236 and 237 is that where in consequence, not of any uncertainty as to the facts themselves, but of the difficulty of applying the law to the facts, it is doubtful which one of several cognate offences the court will consider these facts to constitute, the committing magistrate has before him three courses. He may, in English fashion, allege successively in cumulative counts that each of these several possible offences has been committed; or he may take the briefer course of alleging them as alternatives in a single count (stating, for example, that the prisoner "committed theft *or* received stolen property"); or he may even content himself with alleging only one offence, knowing that the court which tries the case will have power, even under that narrow charge, to convict of any one of the cognate crimes. In England it is not permissible to put accusations into a simply alternative form; and a count alleging that a prisoner "forged, or caused to be forged" a cheque would be bad for uncertainty. This principle renders it impossible to get a conviction for perjury where the only evidence against the prisoner is the fact that he has made two statements which are mutually contradictory. Clearly one of them is untrue; but English practice compels the prosecution to prove specifically which of the two it was; as in the case of Mr. Harris (5 B. and Ald. 926), who thus escaped punishment, in spite of his having "sworn to a fact before a committee of the House of Commons, and afterwards sworn to the direct contrary before a committee of the House of Lords." But in India it is sufficient in such a case that the charge should set out the two contradictory statements; and it need not allege, nor need the prosecution prove, which of them was the false one.

Conviction for Minor Offence.—(*b*) Even the English Common Law recognised that "averments are divisible." Hence in cases where the allegation of a crime includes circumstances which constitute a minor offence along with additional circumstances which change it into a graver one, the jury may usually acquit the prisoner of the grave offence and yet convict him of the included lesser one; as where, upon an indictment for murder, it acquits him of all "malice aforethought," but finds a verdict of manslaughter. In India the code not only permits a similar course, but takes

a step further. Even where the minor offence is not included in the very description of the major one, a prisoner may nevertheless be acquitted of the offence which he was charged with, and convicted of a minor one instead, if the facts proved at the trial show that his conduct amounted to the minor offence alone. In England a variety of modern statutes permit a similar course to be taken in particular cases; as, for instance, where (14 & 15 Vict., No. 100, s. 9) a prisoner is shown to have attempted the offence which he is charged with, but not to have consummated it. But no simple and comprehensive rule, like the Indian one, has as yet been enacted.

Errors in Indictments.—(*c*) English indictments were often overloaded with counts, because of the jealousy with which English law viewed any variance between the charge stated in a count and the evidence given in support of it—a jealousy vividly illustrated by Lord Cardigan's acquittal in 1841, when charged with having shot a person named Harvey Garnett Phipps Tuckett, but only proved to have shot a person named Harvey Tuckett. To make many cumulative statements of the facts was the only way of providing for possible variations between the facts as you originally stated them and the facts as they might come out at the trial. There were, indeed, some variations so slight that the courts would regard them as immaterial; but they were slight indeed. It would be an absolutely fatal error if the stolen "cow" should turn out to be a heifer (*R.* v. *Cooke*, 1 Leach 123), or the "lamb" a sheep (*R.* v. *Loom*, 1 Mood. 160), or if the person robbed should turn out to be called "Shakepeare" and not "Shakespeare" (*R.* v. *Shakespeare*, 10 East 83). But the Indian Code boldly lays down (s. 225) the rule that no error or omission, whether as to the particulars of the offence or even as to the offence itself, shall be regarded as material unless the accused has been actually misled by it. A charge of murder may be effective in spite of its giving a wrong date and misnaming the victim. A charge of cheating may be effective in spite of the framer having omitted to obey the code by specifying the manner in which the prosecutor was cheated. This comprehensive provision, much as it differs from the English practice in indictable offences, is, however, only a reproduction of a principle which is followed in English petty-sessional procedure; where under the Summary Jurisdiction Act of 1848, 11 & 12 Vict., No. 43, s. 1, "No objection shall be allowed to any information, complaint, or summons for any alleged defect therein in substance or form, or for any variance between such information, complaint, or summons, and the evidence on the part of the informant; but if such variance appear to the acting justices to be such that the party summoned has been deceived or misled by it, the hearing may be adjourned to some future day."

Power to Cure.—(*d*) Stringently as the English Common Law treated even comparatively trivial variations between the indictment and the evidence, it did not permit the judge to cure these variations by altering the indictment. For the indictment did not purport to be the statement either of the

prosecutor or of the court, but a sworn utterance from the Grand Jury, which the court could no more alter than it could make. It was not until the present century that Parliament broke in upon this technical reasoning, and recognised the real character of a modern indictment by giving the judge some power of altering the form in which the prosecutor (or the clerk of the peace) has drafted it. But even under Lord Campbell's Act of 1850 (14 & 15 Vict., No. 100), this power of amendment is very restricted, not going beyond the correction of misdescriptions of persons or places or things. But the corresponding provision of the Indian Code (s. 227) is a comprehensive one: "Any court may alter any charge" at any time before verdict, though it cannot add a new charge. Any injustice that might be produced by such an alteration is guarded against by s. 229, which enables the amending court to adjourn the trial, or even direct a new trial, should that appear to be necessary in the interests of either the accused or even the prosecutor.

The "Conclusion."—It may finally be added that, on the other hand, there is one respect in which an Indian accusation is less brief than an English one. Modern legislation has abolished here all necessity for a formal "conclusion" in an indictment. But the Indian Code requires (s. 221) that "The law, and the section of the law, against which the offence is said to have been committed shall be mentioned in the charge," and a statement is also added as to the court under whose cognisance the offence falls. This provision has an obvious practical value; and is but a slight set-off to the great brevity which the preceding provisions have secured.

TRUCK LEGISLATION IN ENGLAND AND ON THE CONTINENT.

[*Contributed by* Miss Adelaide M. Anderson, *one of Her Majesty's Inspectors of Factories.*]

In no branch of study of comparative industrial legislation is it more necessary than in that which touches the law relating to Truck to extend enquiry beyond the statutes themselves, or specific sections of the codes, into the general, social, and industrial order, and the system of law and administration of each country, in order to arrive at a just estimate of the degree of protection given to the wage-paid worker. Still, while bearing this proviso in mind, considerable light can no doubt be thrown on the common needs of the worker for protection in making and carrying out his contract under different industrial and social conditions by a simple examination or summary of the definite legislative provisions of this class, many of them being comparatively recent. In these notes nothing more is attempted than such a summary, with an indication of the administrative machinery which has been found necessary to set the law in motion.

The Conseils de Prud'hommes in France.—The first point that strikes one in comparing the chief industrial European countries is, that the one country, France, which more than any other broke away at the time of the Revolution suddenly and completely from the old industrial organisation (which, no doubt with many oppressions, formed in itself a certain framework of protection to the worker), is the country which has done little or nothing to control by special penal legislation abuses associated in England with the term "Truck system," and that of several projected or proposed laws relating to points covered by the English Truck Acts, those which have been repeatedly voted by the Chamber of Deputies are mainly directed to the suppression of the charges upon wages which have been last of all regulated in England (Truck Act, 1896).[1] No doubt many of the abuses are regulated or checked in the better organised trades, which have founded the special French institution of *Conseils de Prud'hommes.* By these all classes of disputes arising out of the terms of a contract written or implied between employer and workman, involving not more than £8, can be arranged by conciliation or arbitration. By all reports, however, official and private, many evils arising out of Truck and excessive charges on wages

[1] *Rapport fait au nom de la Commission du Travail, Chambre des Députés*, 1898, No. 409.

remain untouched, particularly in unorganised trades. At the same time, one observes that it is among the German peoples, where the old guild forms of organisation have to some extent lingered, that the nearest early approximation to the English laws against Truck in its first sense was developed and the principles of our Truck Act of 1896 (regulation and limitation of fines and deductions from wages) were anticipated.[1] The case of Belgium is peculiarly interesting, for, while inheriting largely the principles of theoretic freedom between employer and employed which sprang from the Revolution, that country has in the last decade made immense progress in several branches of legislative protection for industrial workers, and in the law relating to Truck, has not only learnt from and followed both German and English experience, but has in certain provisions made new and suggestive ventures of her own.

Penal Provisions against Employers.—In all four countries (England, Germany, Austria, Belgium) it has been found alike necessary to provide for enforcement of the penal provisions against employers by empowering inspectors of factories to set the law in motion and by giving them special powers to examine contracts or notices under which workers are employed. In this Austria led the way in 1883, England followed in 1887, and Germany in 1891. In 1887 Belgium made systematic provision against the various abuses of the "Truck system,"[2] and at the same time charged the provincial councils with a certain limited control, aided by advice of local councils of industry and labour.[3] In 1896 the Government inspectors of industry were empowered to enforce this law, and a law regulating fines and deductions from wages, on almost precisely the same lines as the English inspectors.[4] It should be observed that Germany, through the far-reaching powers of the police authorities, who alone institute prosecutions under the Industrial Code (*Reichsgewerbeordnung*), and Austria, through her system of local industrial authorities, who exercise somewhat similar powers, reduce the initiative of their factory inspectors to narrower limits than in England or Belgium. The inspectors in Germany and Austria have, broadly, the duty of noting infringements of the Industrial Codes (which include provisions relating to fulfilments of wage contracts) and reporting them to the local authorities. From the action or inaction of the latter they may, however, appeal to higher administrative authorities.[5]

Early Truck Legislation in England.—Turning to the consideration of the main objects of the laws, I must, in order to bring these notes within reasonable limits, assume, without quotation, the details of the English law, and refer to the Home Office memorandum of March 31st, 1898, which thus defines the matter[6]:

[1] *Gewerbeordnung Novelle*, 1891.
[2] Loi du 16 Août, 1887.
[3] Arrête Royal du 19 Décembre, 1887, et Circulaire du 19 Décembre, 1887.
[4] Loi du 15 Juin, 1896; Loi du 11 Avril, 1896; Circulaire du 10 Juin, 1896.
[5] *Allerhöchster Erlass*, 27 April, 1891.
[6] Published by Eyre & Spottiswoode, 1898.

"The earlier Truck Acts of 1831 and 1887 forbid the wages of workmen—that is to say, the reward of their labour—being paid in food or drink, or clothes or other articles, and also forbid agreements being made by them with their employers as to the laying out of their money upon such articles, and for the deduction of the price from their wages."

"Under these Acts there is nothing to prevent a workman agreeing with an employer that deductions from wages shall be made in respect of fines, or for bad work, or for materials supplied by him to be worked up for him by the workman. The object of the Truck Act of 1896 is to regulate the conditions under which such agreements can be made, and to provide that deductions or payments for fines, bad work, and materials supplied shall be reasonable, and that particulars of the same in writing shall be given to the workman."

To sum up, for comparison with what follows, the main prohibitions of the earlier Truck Acts, it is illegal for an employer—

(*a*) To contract with a workman to pay his wages otherwise than in current coin, or to pay the whole or any part of the wages otherwise than in coin. Exception is made (under conditions) for supply of food to be cooked and eaten on the premises, use of a house at a rent, supply of medicine or medical attendance, supply of fuel for work or provender for a beast of burden, education of the workman's children.

(*b*) To contract with a workman as to the place at which or the manner in which his wages shall be laid out or expended, or to deliver goods (other than those specially excepted) for the workman's personal consumption, and deduct the price from his wages.

(*c*) Where it is customary to pay in advance wages or part thereof, to make any deduction in respect of such advance on account of discount, interest, or similar charge.

Any "understanding, device, contrivance, collusion, or arrangement" between the employer and workmen is a contract within the meaning of the Act.

In Germany and Austria.—The objects of the provisions on these subjects embodied in the German and Austrian Industrial codes are similar; but under both divisions—(*a*) direct or indirect payment otherwise than in current coin, (*b*) unregulated or excessive fines or deductions in respect of damages, or deductions in respect of tools or materials to be used by the workman in relation to his labour—there are important variations. In both codes the exceptions to the rule that the money wages (*Löhne*) of the worker are to be reckoned and paid in current coin are brought much more prominently forward than in the English law[1]; and the very sections which contain the general prohibition—s. 115 of the German Industrial Code, s. 78 of the Austrian Industrial Code—provide also for agreements between

[1] Act of 1831, ss. 23, 24; Act of 1887, ss. 7, 8, and 9.

employed and worker for part payment in certain other material forms. It appears much more precisely in the Austrian than in the German code that the legality of the exception depends on the existence of an express agreement to that effect between the contracting parties; but in both codes the limitation of the agreement by the condition that the materials or other equivalents to wages shall not be reckoned at more than cost price is in some instances absolute, in others qualified. The sections may thus be compared:

Germany.

S. 115.—Employers are bound to calculate and pay the wages (*Löhne*) of their workers in current coin of the realm. They may not supply goods to workers on credit. It is, however, permitted for them to provide the workers with food at cost price, with lodging and use of land at the local rates, with fuel, light, regular board, medicines and medical aid, tools and materials for work, at the estimated cost, as part payment of wage (*unter Anrechnung bei der Löhnzahlung*). Provision of tools and materials for piecework is permissible at a higher rate if so agreed upon beforehand and if the rate is not above the local and customary rate.

S. 115 (*a*).—Wages and payments on account must not be paid in public houses or shops without authorisation from the administrative authorities.

S. 117.—Contracts contrary to s. 115 are null and void. The same holds good of agreements between employer and workmen, that the latter shall supply their needs at any special shops, or that they shall apply their earnings to any purpose except such as will improve the position of the worker or his family.

Austria.

S. 78.—Employers are bound to pay the wages of their workers in current coin. They may, however, by special agreement provide the workers with lodging, fuel, use of land, medicines and medical aid, tools and materials for work, as part payment of wage. The provision of food as part of the wage may only be agreed upon at cost price. At the same time no agreement may be made that the workers are to supply their needs at any specified shops. Employers may not supply workers on credit with any goods other than those specified, and more particularly are forbidden to supply alcoholic liquor. Payment of wages in public houses is forbidden.

S. 78 (*c*).—Contracts contrary to the above provisions are null and void.

The main points shown above appear in the Belgian law of August 16th, 1887; that law, however, included regulations as to fines which were forerunners of our Truck Act of 1896, and the regulation of which in the German and Austrian codes comes under a distinct division, which has not the same wide application as the general sections against Truck. It will be necessary to refer to this difference of scope presently.

Deductions from Wages: Belgium.—The Belgian Ministerial Circular of June 10th, 1896, addressed to inspectors, when responsibility for enforcement of the law devolved on them, pointed out that the chief objects of this law of 1887 had been to secure payment in full of wages in metallic or fiduciary money, being legal tender, to prohibit payment of wages in public houses, and to secure prompt payment of wages. At the same time it was pointed out that while payment in full of wages was the rule, deductions from wages were provided for as exceptions. The list of exceptions given in the law was longer, and perhaps on the whole clearer than in the English, German, or Austrian laws at that date (1887). Lodging and use of land; tools, materials for work where it is customary or agreed upon to supply them at a charge; uniforms; food; firing. Fines (*amendes*), if levied under a notice or rules affixed in the workplace; contributions to provident and relief funds; repayments of advances on wages;—all these may be legally the subject of deductions from wages, and no others. Some doubt seems, however, to have existed as to the general right of employers to withhold wages for bad work, for this item was added by the law of 1896, which expressly affirmed the right of the employer to indemnify himself for harm done to his materials, raw or manufactured. As regards the condition of limitation of charges for articles supplied to actual or estimated cost price, this only applied to tools and materials used in work and uniforms worn by workers. Lodging and use of land may be charged upon wages only if the terms of the agreement are freely concluded between the contracting parties. A further safeguard is imposed in the cases where food, clothing, firing, are supplied by the employer; no deductions may be made for these except by written authorisation of the permanent deputations of the provincial councils, to which authorisation specific conditions may be attached. Appeal may be made from a decision of the council to the king. It is of special interest to compare the Belgian list of exceptions with that contained in ss. 23 and 24 of the English Act of 1831. Medicine and medical attendance (accounts for which are to be audited by auditors appointed by the workmen) is now the most important subject of exception in the English law which is not to be found in the Belgian law; and, *vice versâ*, the exception as to supply of clothing in the Belgian law, with its safeguards, finds no place in the English law. Further, the English provision that in certain cases money may be advanced to workers by the employer, and afterwards deducted from wages only without interest, is balanced in the Belgian law by the provision that deductions in respect of advances may not exceed one-fifth of

the wage due. The exception as to fines in the latter country is considerably modified by the later law (1896), which has not quite the same extension in respect of the workmen to whom it applies. In this it resembles to a certain extent, although it goes further than, the German and Austrian codes.

Disciplinary Fines.—It thus becomes necessary, before proceeding, to compare the regulations of the different countries on the subject of disciplinary fines, to sum up the different positions as regards classes of workmen to whom the various provisions against Truck apply.

England.—In England the provisions of the Truck Acts, inclusive of those relating to fines and deductions, apply in all places where workpeople, adults or minors, are engaged in manual labour of any sort under a contract with an employer, even if the latter should be an agent, a parent, or a workman; and by a special section they also apply as between a shopkeeper or trader and a workman, who makes and sells to him articles under the value of five pounds. They do not apply to domestic servants or to persons whose principal work is of a clerical character; but the provisions of the Truck Act, 1896, relating to fines, apply to all shop-assistants, whether their work is principally manual or not.

Germany.—In Germany the provisions against Truck in the first sense have a considerably wider application than the provisions against excessive fines, which were later established and which will be presently considered. The former apply to every industrial worker coming within the scope of Division VII. of the Industrial Code—*i.e.* according to a decision of the *Reichsgericht*; to any persons who are under a contract of service with an employer, as apprentices, assistants, journeymen, factory workers, giving him their services for a specified time (not merely occasional aid) for industrial purposes. Domestic servants, fishermen, agricultural labourers, foresters, are excluded, and members of a family working for a parent or husband are not covered. Shop-assistants are expressly excluded from the provisions relating to Truck, and a few others by s. 154. Out-workers, even when they provide their own materials, are expressly included by s. 119*b* under the provisions against Truck, although they are not otherwise covered by the Industrial Code. The term employer is also expressly defined for this purpose by s. 119, as including an employer's agent and representative, whether members of his own family or not; and it is immaterial whether the employer would be generally regarded as a manufacturer, a small employer, or a merchant.

The regulations as to fines (*Geldstrafen*), on the other hand, only apply in the case of "factory workers"—an uncertain term, not defined by the code, and one which has given rise to a series of decisions of the *Reichsgericht*—on specific instances, which are too long to be here reproduced. Numbers of workers, character of the organisation of the work, and size of the workplace are all characteristics which were taken into consideration by the court in deciding that the given workplaces were "factories."

Austria.—In Austria the provisions against Truck contained in the Industrial Code have, like those in Germany, not quite so wide an application as the Truck Acts in England, excluding domestic servants and home workers employed by a parent, casual day labourers, agricultural labourers, fishermen; however, they cover not only all industrial workers engaged in manual labour under a contract with an employer, but also shop-assistants. Out-workers for a factory or workshop are included, and an employer is defined as covering members of his family and all representatives, whether managers, overseers, or foremen. The special regulations for fines and deductions apply, as in the German Code, to a narrower class of workers—*i.e.* to factory workers and to employés in workshops where more than twenty persons are engaged. According to a ministerial order of 1883, "Those industries are to be classed as factory industries (*als Fabriksmässig*) in which a manufacturing process is effected within enclosed workplaces by the aid of not less than twenty workers on an average working with machines under subdivision of labour and controlled by an employer who does not himself render manual assistance in the work."

Belgium.—In Belgium the law indicated above applies to all workers engaged under a contract of hiring and service, with exception of agricultural labourers, domestics, and, generally, workers lodged and fed by their employers. The law of June 15th, 1896, which regulates the affixing of working rules and specification thereon (among other matters), of deductions for materials, the nature and rate of fines, if any, and the mode of their application, applies only to industrial or commercial undertakings which employ at least ten workers; but this limitation may be removed by royal decree, and the number ten is to be reduced to five in any case by the beginning of 1900. Two provisions, however, have a wider extension—the limitation of fines to one-fifth of the daily pay, and a provision that all workers shall have the right to control weights and measures, or other means of ascertaining the amount of work done, and consequently of wages earned. These apply to all workers alike.

Excessive Fines or Deductions.—The provisions of the various codes and statutes, as regards excessive fines and deductions or payments from wages, may be summarised as follows:—

England.—In England there is a four-fold protection:

(1) Notice of the terms of the contract under which they are levied must be constantly affixed, so that it may be read and copied by all persons whom it affects, or the contract must be in writing signed by the workman.

(2) Particulars in writing must be supplied to the workman on each occasion when a deduction or payment is made, showing the acts or omissions on account of which fines or deductions for damage or materials or other things supplied in relation to work are imposed, and the amount of the fine, payment, or deduction.

(3) A register of fines must be kept open to inspection.

(4) Fines and deductions for damages or bad work must be "fair and reasonable" with regard to all the circumstances. Fines may be only for acts of a nature to cause loss or hindrance, and damages are limited absolutely by the amount of loss to the employer. Deductions for materials must not exceed the actual or estimated cost to the employer.

Belgium.—In Belgium the protection is five-fold, and not on precisely the same lines[1]:

(1) Notice of the causes and rates of fines and of deductions for materials must be given in the working rules, which are affixed in every workplace where more than ten (or, after the end of 1899, five) persons are employed.

(2) Notice of the objects to which sums realised by fines are applied must also be given in the working rules.

(3) Fines incurred by workers must be notified to them either immediately or as soon as possible after they are incurred, and a statement made of the cause, the date of incurring, and the amount of the fine.

(4) Rules containing notice of fines must be put before workers in time to admit of their raising objection either directly to the employer or confidentially through the inspector.

(5) Fines must not exceed one-fifth of a day's wage.

It is of interest to observe that the law containing the above provisions lays down a general principle which is being successively applied to individual branches of industry in England under the Factory Acts—*viz.* that piece-workers are entitled to have particulars of their rates of pay. In Belgium it is provided that the necessary information shall be given to all pieceworkers in the working rules.

Germany.—In Germany the following conditions apply[2]:

(1) Notice of causes and rates of fines and deductions agreed on for time lost must be given in working rules affixed in every factory in which at least twenty persons are employed. Legally established rules are binding on both contracting persons, and no fines are legal except those named in the rules.

(2) Fines may only be applied to institutions in the factory for the benefit of the workers, and the working rules must contain a statement of the objects to which fines and deductions agreed on for time lost are to be applied.

(3) Fines may not exceed in general a half-day's wage, or in case of serious infringements of discipline (such as acts endangering safety of fellow workers) a whole day's wage.

[1] Loi du 15 Juin, 1896.

[2] *Reichs Gewerbeordnung*, ss. 134*a* to 134*d*.

(4) The right of the employer to require indemnity for damages done by workers is explicitly declared by the code to be not curtailed by these provisions. The commission who prepared the final draft of the code, however, expressed the hope that in many cases the employers would see the way to applying sums deducted for time lost to the same purposes as deterrent fines (*Geldstrafen*), and for this reason a place was given for them in the working rules. It still remains in general open to the employer, either by an individual contract with a workman or by a notice in the working rules, to provide for deductions for damages to cover his own losses.

(5) Fines incurred must be notified to workers without delay, and must be entered in a register open to inspection.

(6) Before the rules are established, or any modification made in them, opportunity must be given to adult workers affected by them to express an opinion upon them. A copy must be handed to each worker on entering the employment.

Austria.—The following conditions apply in Austria[1]:

(1) Notice of causes and rates of fines and all kinds of deductions must be given in the working rules; these must be affixed in factories and workshops employing more than twenty workers, and be read to all workers on entering the employment.

(2) The mode of applying fines must be specified on the rules.

(3) A register must be kept of fines open to inspection both of workers and industrial authorities, and shall be laid before the latter whenever a worker makes objection either to a fine or the mode of its application. This provision in the code is supplemented, however, by the later law relating to powers and duties of factory inspectors, which gives the latter duties of supervision in these as in other matters relating to protection of factory workers.

English and Continental System Compared.—To sum up the resemblances and differences between English and continental regulation of deductions and fines, the following features may be specially noted:

(*a*) Notice given in the rules affixed in the workplace, in such a place as to be easily read, serves and is binding as a contract (under conditions) in all four countries considered. In Germany and Belgium special provision is made for workers to express an opinion on the rules; in the latter country a unique provision against possible intimidation of workers is made, expressly giving them opportunity to send confidential opinions to the inspector. In Germany not only must a copy of rules be handed before their establishment to each worker, but also one must be served on the administrative authority in order that official objections, if any, may be raised.

[1] *Gewerbeordnung*, s. 88*a* to 90.

(*b*) No fines may be imposed, except those specified in the notice, in any of the four countries. Deductions in respect of damages and materials for work are more carefully regulated in England than in any of the other countries.

(*c*) The maximum limit of fines in relation to the workers is fixed absolutely in all the countries named except England, where the limit is what is "fair and reasonable" having regard to all the circumstances of the case, and where no final decision has yet been obtained of the principles determining what is fair and reasonable or indicating the circumstances which are material in forming a conclusion.[1] In Germany employers are empowered to inflict a higher maximum fine for breaches of discipline involving danger to fellow workers, or in other grave cases, than for ordinary disregard of rules.

(*d*) In England alone of the four countries is the employer free to make what use he chooses of the proceeds of deterrent or disciplinary fines. In Germany the employer is specially influenced (see s. 134*b* [5] of the Industrial Code) towards applying deductions for time lost, as well as fines to workers' institutions.

Remedies for Breaches of Truck Law.—As regards remedies for breaches of the law against Truck, in all four countries the serious offences of payment of wages in goods, or illegal stipulations as to the place in which or the objects on which wages shall be laid out, not only render an employer liable to proceedings for recovery of wages so far as not paid in current coin, but also deprive him of any lien on goods given or illegally sold to the worker. Generally, too, an employer may be fined for illegal payments or deductions, proceedings for penalties being either instituted by the Government inspectors (as in England, Belgium) or taken at their instance (as in Germany, Austria).

Industrial Courts.—It may be observed in passing that industrial courts (*Gewerbe Gerichte*) provide, where recourse is not had to civil proceedings, for arbitration in cases of dispute arising out of wage-contracts both in Germany and in Austria. The objects of these courts might be compared with the *Conseils de Prud'hommes*, but there is a considerable difference. The arbitrators in an industrial court must be qualified lawyers, and be nominated by the Minister of Justice (for example, in Austria); whereas the French *conseils* are constituted partly of employers, partly of workmen, both elected by persons engaged in the trades possessing a *conseil.*

Comparison of Penalties.—It is of interest to compare the penalties for breaches of the law:

England.—(*a*) The English law provides for a maximum £10 penalty

[1] Magistrates have, however, imposed penalties for "unreasonable" deductions, having regard to slender wages earned by workers, even where the loss to the employer was greater than the deduction. No appeal followed.

for a first offence, a former minimum of £5 having been repealed, except for Ireland; a maximum £20 penalty for the second offence.[1] A third offence may be treated as a misdemeanour, and the fine at discretion of the court may rise to £100. In 1897 twenty-four prosecutions of employers touching eighty-two cases were instituted by the Factory Department. The average penalty imposed was 10*s.* 9*d.*, and the average costs were 9*s.* 4*d.*

Belgium.—(*b*) The Belgian law provides for a minimum penalty of fifty francs and a maximum of two thousand francs for failure to pay current coin or to observe conditions of exceptions to the law; for a penalty of twenty-six to one thousand francs for failure to affix rules, or for a false statement that workers have been consulted in framing them; for a penalty of twenty-six to five hundred francs for infliction of fines and deductions not stated on rules; for a penalty of twenty-six to two hundred francs for failure to enter particulars of fines in the prescribed register or to give particulars of fines to workers. Complete particulars of prosecutions instituted are not given in the annual report of the inspectors, although summaries are given monthly in the *Bulletin du Travail.* In the last six months of 1896 proceedings were taken for forty-five different infringements touching seventy-two cases.[2] The average penalty seems to be twenty-six francs.[3]

Germany.—(*c*) The German Industrial Code provides a penalty of two thousand marks or six months' imprisonment for payment otherwise than in current coin; a penalty of three hundred marks for failure to affix rules; a penalty of one hundred and fifty marks for illegal fines or application of fines; a penalty of twenty marks for failure to keep a register of fines or to give particulars of the same to workers.

No statistics are given of proceedings for breaches of this part of the code in the official summary of inspectors' reports, although striking cases are mentioned. The penalties quoted as having been inflicted for infringements by the courts are smaller than those in England or Belgium, but the indirect action of the inspectors seems to lead to good results. For example, an employer who had illegally been making deductions from workers' wages for the cleaning of his factory for three years was offered his choice of proceedings in open court or of handing the sums to the workers' provident fund. He chose the latter course and paid one thousand marks into the fund.[4]

Austria.—(*d*) The Austrian Code provides for three methods of dealing with infringements—by caution, a fine of ten to four hundred gulden, and imprisonment in gross cases or failure to pay penalties. The amount of

[1] *Annual Report of H.M. Chief Inspector of Factories*, 1898, p. 37.

[2] *Rapports Annuels de l'Inspection du Travail*, vol. ii., 1897.

[3] See *Revue du Travail*, Bruxelles, 1898.

[4] *Amtliche Mittheilungen aus den Jahresberichten der Gewerbe Aufsichtsbeamten*, Berlin, 1898, p. 187.

gain to the employer by the infringement as well as loss to the worker are to be taken into account in fixing a penalty. Appeals from decisions of the industrial authorities of first and second instance before whom these cases come would be to the Minister of Industry and Commerce; and the Chief Inspector of Factories has power to take part in deliberations on final decision.

COMMON LAW AND STATUTE LAW.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

Rivalry between Common Law and Statute Law.—The modern English lawyer is apt to regard common law and statute law as hereditary foes. "My Lady Common Law," he would be inclined to say, "regards with jealousy the rival who arrests and distorts her development, who plants ugly and inartistic patches on her vesture, who trespasses gradually and irresistibly on her domain." But the historian knows that the antagonism between these two branches or forms of the law is not so absolute as is thus suggested, that they are necessary complements of each other, that their relations are those of co-operation rather than of opposition, and that this co-operation has probably been nowhere so complete as in our own country.

The Growth of the Common Law.—The common law of a nation is part of the national life. It is one aspect of the national life, of which other aspects are language and religion. It is based on custom, on the custom of such groups as the family, the tribe, the manor, or the borough. As the groups coalesce the disparate customs become uniform. They are assimilated to each other by the contact of different groups, by the exigencies of commercial intercourse, by the influence of judicial decisions, and finally by the direct action of the legislature.

These customs are observed in primitive times because they exist, without asking why or wherefore. It is safer to stand on the ancient ways. As man has acted in the past so he should act in the future. It is enough to know that if he does not, evils, supernatural and social, of an indefinite, and therefore of an alarming, character will probably await him.

Should a question arise as to what action ought to be taken in a particular case, the knowledge is to be sought from an elder, from a chief, from a priest, or from a member of some other privileged class. It is he who can pronounce the doom or unravel the mysteries of procedure. He is, in the language of early Iceland, the "sayer of the law." The notion of enacted law, of law as a command, laid down by a secular "sovereign," and backed by physical force, is of later date. The early lawgiver "found" or "declared," rather than made, the law. He brought it down from Sinai. He reduced to writing, and revealed to the lay and profane public, what had previously been matter of esoteric knowledge.

Characteristics of English Law.—Among the causes which have produced the characteristic features of English law, as compared with the law of France or Germany, three are prominent—the continuity of legislation the representative character of the legislative body, the strength of the central government.

Its Continuity and Uniformity.—The English parliamentary mill has steadily and unceasingly ground out Acts of Parliament for more than six hundred years—a period of continuous and unbroken legislation to which no European country can show any parallel. During the whole of this period the legislature has, through its constitution, been kept in touch with the feelings, wishes, prejudices, needs, of the people at large. Our law has been made for us, not by a monarch's edicts, not by an official or a privileged class, but by elected representatives of the people. The most despotic of our kings—perhaps these more than others—have always given a popular character to their laws. Henry VIII. may have said in his heart, "Regia voluntas suprema lex," but he took care not to say it aloud. He called the tune, but he did not offer to play a solo. The most arbitrary of his enactments were made by the authority of Lords and Commons, in parliament assembled. And the law thus made has had effect throughout the realm. The strong hand of the first William and the second Henry welded England into a State, compact and centralised to an extent not reached in any other European country before the present century. The king's writ ran throughout the whole of the land. The king's judges visited all the chief towns. Liberties, franchises, and immunities there doubtless were, but the extent to which they derogated from the central authority was as nothing compared with the rights and powers of lords and cities on the continent. Any important case could be brought up into the king's court. Thus the uniform and regular law administered by the royal courts gradually advanced upon and superseded the diversities and irregularities of local customs, leaving only a few manorial and burghal customs here and there as traces of the rank luxuriance of the earlier jungle. The process was, however, one of recognising, cultivating, and developing, rather than of killing or driving out, local usages; and the body of law so formed was thoroughly national in its character, and proved to be eminently capable of growth and expansion.

National, in what Senses.—It is national in two senses: that of being home-grown and home-made, and that of being in its application general and not confined to particular localities, classes of persons, or groups of transactions. The grammar and groundwork of English law, as of the English language, have always remained English, although it has freely absorbed and assimilated foreign elements. And the strength, compactness, and unity of the State have impressed uniformity on, and given generality of application to, the law. Where there are already several bodies of law struggling with each other for existence, the recognition of another does

not present the appearance of an anomaly, or materially increase the inconveniences of the existing state of things. But where a single national body of law holds the field the case is different. The law merchant, as developed by Lord Mansfield, with his special juries, has become part and parcel of the common law, and has not remained a thing apart. The canon law may be binding on clergymen by virtue of their ordination promises, but it does not, as such, bind the lay-folk; whilst the law of the land binds clergy and laity alike. There is no administrative law, and there are no special administrative courts, for the exclusive use of Government officials. The legality of their proceedings is tested by the ordinary law and courts of the land. Even the privilege of peers has become a matter more of antiquarian curiosity than of practical importance.

Early Statute Law.—The early chapters of the English Statute Book present some features of archaic legislation. They often declare rather than enact. They combine general enactments or declarations with particular decisions. "The great virtue," as has been well said by Mr. Jenks,[1] "of the English parliamentary scheme was that it enabled the exponents of all the customs of the nation to meet together and explain their grievances. If we glance at the roll of the English Parliament we shall find that the great bulk of the petitions which are presented during the first two hundred years of its existence are complaints of the breach of old customs, or requests for the confirmation of new customs, which evil-disposed persons will not observe. These petitions, we know, were the basis of the parliamentary legislation of the period. What is this but that Parliament was a law-declaring rather than a law-making body?" Of the combination of general with special remedies the Statute of Waste (20 Edward I.) supplies a good illustration. It begins with a long story showing how Gawin Butler, having impleaded Walter de Hopton of waste made by him in certain lands, of which Gawin was tenant for life, died before obtaining judgment; how his brother and heir, William, who was under age and a ward of the king, impleaded Walter for the same waste; how Walter came before Gilbert Thornton and his companions assigned to hear the king's pleas, and said that he ought not to answer William for waste made in the time of another; and how the justices differed in opinion. Thereupon the king, in his full Parliament, by his common council (*de communi consilio*)[2] proceeds to ordain that all heirs may have an action by writ of waste done in the time of their ancestors, and the king himself commands Gilbert Thornton and his companions to proceed and give judgment accordingly. The king is acting partly in his legislative capacity, partly in his judicial capacity, as having

[1] *Law and Politics*, p. 63.

[2] "It is important to remember that in the middle ages no distinction was or could be drawn between 'council' and 'counsel'; both are '*consilium*'" (Maitland, "Introduction" to *Memoranda de Parliamento*, p. lxvii). Professor Maitland's "Introduction" to this volume of the Rolls' Series, which relates to the Parliament of 1305, contains the best description of the proceedings in an early English parliament.

power to review and control the proceedings of the justices assigned to hear the pleas, and partly as guardian of an infant heir.

Petitions to the King in Parliament.—Bentham has accustomed us to draw a broad distinction between statute law and judge-made law. But in a case like that of William Butler the two forms of law obviously tend to slide into each other. And both forms of law were at that time practically made by the same persons. The king listened to the petitions which were presented to him in Parliament—petitions not unlike in their general character to the *cahiers* of grievances which, as revivals of ancient forms, preceded the French Revolution—and then, having considered the matter, with the help of his sages in the law, either did nothing or, through their agency, devised an appropriate remedy which might or might not correspond to the petition. It was not until the comparative decline of royal power under the Lancastrian dynasty that Parliament asserted its right of dictating the terms on which the laws for which it asked should be made, and marked the change in the character of legislation by making a significant addition to the legislative formula. Henceforth laws are expressed to be made, not merely with the advice and consent, but *by the authority*, of Parliament.

Divergence of Parliamentary and Judicial Law-making.—As the legislative and judicial authorities became distinct from each other, so statute law and common law tended to flow in separate channels. The legislation of the first Edward, moulded by his judges, is largely concerned with private rights and the corresponding remedies, and settled the main lines on which English law, both public and private, was to proceed. But though Parliament never renounced or placed limits to its omnipotence, yet the later volumes of the Statute Book are far more concerned with public or administrative than with private law. Nine-tenths of each annual volume of statutes[1] are concerned with what may be called administrative law; and an analysis of the contents of the general Acts during the last four centuries would probably show a somewhat similar proportion. On the other hand, at least nine-tenths of the leading rules which make up the law of contract and tort are common law, and their origin and development are to be found in the pages of the Year Books and the Law Reports, and not of the Statute Book.

But the intervention of the legislature in the domain of private law, though sparing and unsystematic, has been continuous. When the development of common law rules has failed to keep pace with changes in social and economical conditions, when a too servile adherence to precedents has forced those rules into a wrong groove, the legislature has never shrunk from stepping in and bringing the rules into conformity with the national will and national requirements. And the supremacy of Parliament has been unquestioned. The highest courts of justice in England have never claimed, like the *parlements* in France, the right to register, and for that purpose to review, the enactments of the legislature. There has been a natural tendency

[1] *I.e.* of the public general Acts.

on the part of the judges to place a narrow construction on enactments which appeared to them to conflict with what they have regarded as fundamental principles of common law, to round off their angles, to adapt them to their environment by means of ingenious and sometimes far-fetched glosses; and the process has occasionally been carried to such an unwarrantable extent as to justify the expression of driving a coach and four through Acts of Parliament. But the action of the courts is to be judged in the light, not of a few petulant or captious criticisms by individual judges, but of their general course of conduct; and they have as a rule loyally adhered to their function of being, not critics of the legislature, but interpreters of the law.

The Authority of Precedent.—If the most prominent feature of English legislation has been its continuity, the most prominent feature of English judge-made law has been the binding force of precedent. This feature is a direct consequence of the centralised character given to English constitutions by strong Norman and Angevin kings. The authority of the king, through his courts at Westminster, has for centuries been asserted effectively over all other courts in the kingdom. There has been nothing in England answering to the twelve provincial *parlements* of France, each claiming co-ordinate jurisdiction with the *parlement* of Paris, each with its own *jurisprudence*. If there is a question what the common law is, the practice and usage of Westminster has supplied the test. Under such a centralised and hierarchical system it is easier to assess the comparative weights of judicial precedents, and to recognise and strengthen their authority, than in a country with many judicial centres. The effect has been to enrich the substance of English law at the expense of its form. There is no body of law with so great a wealth of judicial precedents, drawn not from imaginary cases, but from the facts of actual life, none in which there is so good a chance of finding a rule precisely fitting the case for which guidance is wanted. One feels as one studies it that it is the product, not of schoolmen or professors, but of hard-headed business men grappling with tough problems of actual life. On the other hand, this very wealth of precedent, and the concrete form in which legal rules are presented, is apt to exercise a cramping influence on the legal mind. The knowledge that industrious search will probably unearth in time a case precisely in point produces a disinclination to rely on, or to recognise the importance of, principle. A legal text-book is apt to be an exhaustive but uncritical collection of decided cases. The advocate or the judge, when embarking on the sea of legal argument, is apt to grope his way round from headland to headland, instead of steering across by compass. Rules painfully built up by the competition of conflicting analogies, though more certain in their application, are less easy to express than rules deduced from general principles. Hence, though the leading principles of English law are easy and clear to the trained lawyer, the knowledge of law is more of an esoteric science in England than in the countries of written codes.

A Comparison with France.—Useful light may be thrown on the characteristic features of English law by a glance at the main stages in the development of law in such a country as France. The France of the old *régime* never developed a representative legislature, never established a Supreme Court for the whole country, never achieved unity of law. The States General came into existence at about the same time as the English Parliament, a time at which representative institutions were breaking out all over Europe. But their development was arrested. Their activity was intermittent; their representation of the country was incomplete; they never became a true legislature. They did not sit continuously. They were only called together on occasions of emergency. For more than a century and a half (1614—1789) they were never summoned at all. They only represented the royal bailiwicks. In the States General of the fourteenth century Burgundy, Provençe, and Brittany do not figure. In their functions with respect to legislation they stopped short at the earliest stage of the English Parliament. The king wanted money; the people had grievances. They met and struck a bargain, in pursuance of which certain grievances were redressed and certain financial aids were granted. But if legislation was required, it was the king who made the law. The elected members of the States General were shackled by a *mandat imperatif*; they were limited agents, having no powers beyond those specifically entrusted to them by their constituents. Thus they could not shape the laws for which they asked. The power of making laws remained with the Crown, and was exercised by means of Ordinances (*Ordonnances*), which were drawn up by the king's chancellor. As the king's will was not directly associated with or supported by the national will, the power of legislation was less freely exercised, and the laws made carried with them less authority, than in a country with a representative legislature. Nevertheless, the general Ordinances of the fourteenth to the seventeenth centuries were numerous, and some of them were of great importance.[1] They were usually, but not always, made after sittings of the States General, and with reference to the *doléances* and *cahiers* presented at those sittings. The series begins with the Ordinance of Philip "le Long" in 1318. Other Ordinances followed in the troublous times of John and Charles VI. The great Ordinance of Montil les Tours, in the reign of Charles VII., embodied the programme of reforms which the Crown desired to effect at the close of the Hundred Years' War. The fifteenth century closed with two great Ordinances, based on the grievances presented by the States General of 1484, the Ordinance of July, 1493, and that of March, 1498 (Ordinance of Blois). The reign of Francis I. was marked by the great Ordinance of Villers-Cotterets (1539). Then came the Ordinances which are associated with the name of the Chancellor L'Hôpital, and of which the three most important, Orleans (1560), Roussillon (1563), and Moulins (1566), arose out of the sittings of the States General at Orleans

[1] See Esmein, *Cours Élementaire d'Histoire du Droit Français*, pp. 780, etc.

in 1560. The States General of 1576 led up to a new Ordinance of Blois in 1579. The series was closed by the Ordinance of 1629, drawn up by the Chancellor Michel de Marillac, and based on the grievances presented by the States General of 1614 and on the suggestions made by the subsequent assemblies of "notables." These Ordinances dealt, among other things, with such subjects as the celebration of marriages (1579, 1629), the registration of births, deaths, and marriages (1539, 1579, 1629), the law of evidence (1566), the registration of gifts (1539, 1566), and the limitation of entails (*substitutions fidei-commissaires*) (1560, 1566). But their most important work was in connection with the procedure of the courts. They fixed the essential lines of civil and criminal procedure, and completely transformed the character of criminal procedure, substituting for the accusatory, oral, formal, and public procedure of the feudal courts the inquisitorial, written, informal, and secret procedure of the Roman and canon law. This change was principally effected by the Ordinances of 1498 and 1539.

Ordinances of Louis XIV. and Louis XV.—The Ordinances of Louis XIV. and Louis XV. are of a different character from those just described. The Ordinances of the fourteenth to the seventeenth centuries answer to our amending Acts. The Ordinances of Louis XIV. and Louis XV. are codes. They were framed by learned commissions. They presented in a complete, systematic, and detailed form the whole of a particular branch of the law. They extended to the whole of the country. They were the immediate predecessors of the existing French codes, and to a great extent they suggested the form and supplied the material of these codes.

Colbert and D'Aguesseau.—The Ordinances of Louis XIV. and of Louis XV. are associated with the names of a great financier and a great lawyer. The former were due to the suggestion of Colbert; the latter were formed under the direction of the Chancellor D'Aguesseau. The most important of Colbert's Ordinances were four in number: (1) that of 1667, containing a code of civil procedure; (2) that of 1670, regulating criminal procedure; (3) the *Ordonnance du Commerce* of 1673, supplemented by the *Ordonnance de la Marine* of 1681, and forming together a code of commerce for land and sea; (4) the Ordinance of 1669, constituting a code of forest law. The Chancellor D'Aguesseau aimed at nothing short of a complete code of French law, but was unable to produce more than four fragments of the gigantic work which he had contemplated. These were: (1) the Ordinance of 1731 on gifts; (2) that of 1735 on wills; (3) that of 1747 on family settlements (*substitutions fidei-commissaires*); (4) that of 1737 on forgery.[1] The first three of these Ordinances have been to a great extent embodied in the Code Civil; the fourth has passed almost in its entirety into the existing codes of civil and criminal procedure. The *Code du Commerce* practically consists of Colbert's *Ordonnances du Commerce* and

[1] This subject was rather more comprehensive. The title was *Concernant le faux principal et le faux incident et la reconnaissance des écritures et signatures en matière criminelle.*

de la Marine, and this accounts for that code being to a great extent out of date and unsuited to modern commercial requirements.

Registration of Ordinances by "Parlement."—It has been said above that the French Ordinances, being based merely on the royal prerogative, did not carry with them the same kind of authority as Acts of the English Parliament. They required, as a condition of their validity, registration by the judicial bodies called *parlements*. This registration was probably intended to be merely a mode of promulgation; but the *parlement* claimed, as incidental to it, the right of criticism and a discretionary power to refuse registration. And in the absence of any popular control over legislation, these claims obtained a certain amount of popular support.

A "Bed of Justice."—If the *parlement* persistently refused to register, the proper move in the constitutional game was that the king should hold a "bed of justice." This meant that, by appearing in person in his court, he superseded the action of his deputies, and took upon himself the personal responsibility of requiring registration. But even then the courts had large powers of nullifying an Ordinance by evading its provisions or even declining to give them effect. Michel de Marillac's Ordinance of 1629, which, though embodying useful reforms, did not meet with judicial approval, and was contemptuously christened the Code Michaud, was nullified in this manner. Under the strong rule of Louis XIV. the powers of the *parlement* with respect to registration were taken away by a royal declaration. But they were revived in the Regency, and during that time and after the majority of Louis XV. gave rise to frequent conflicts. A famous refusal to register in 1770 led to Maupeou's *coup d'état*. The recalcitrant magistrates were deposed and exiled, and the *parlement* of Paris was suppressed. It was revived by Louis XVI., asserted its rights by vetoing Turgot's reforms in 1776, and had to be overridden by the holding of a "bed of justice." Further conflicts followed. The last "bed of justice" was held in 1788, and was followed by the summoning of the General Assembly, which ushered in the Revolution and swept away the old *régime*.

The "Parlement" of Paris.—The *parlement* of Paris was developed out of the king's council in much the same way as the royal courts at Westminster. But it differed from them in two respects. On the one hand it continued, as we have seen, to claim a share of legislative authority for centuries after a definite line of distinction had been drawn between legislative and judicial functions in England. On the other hand, its judicial authority did not extend to the whole kingdom. It did not succeed in establishing supremacy over the provinces which the Capetian kings gradually added to their original royal domains. The seignorial jurisdictions of these provinces gradually crystallised into twelve provincial *parlements*.[1] Each of these *parlements* was sovereign in its own sphere and independent of

[1] Toulouse, Grenoble, Bordeaux, Dijon, Rouen, Aix, Bretagne, Pau, Metz, Besançon, Douai, Nancy.

the *parlement* of Paris ; and each developed a *jurisprudence* of its own. Thus the chief factor which made for unity of law in England, the all-pervading influence of the courts at Westminster, was absent in France.

Customary Law in France.—The personal laws of the several Teutonic tribes had become territorial customs, which remained separate, although they fell into two main groups, corresponding with the regions which became known as the *pays de coutumes* and the *pays de droit écrit*, and were bounded approximately by the line which separated the northern dialects of the *langue d'oil* from the southern dialects of the *langue d'oc*.[1] In the *pays de droit écrit*, which had been more completely and permanently Romanised, Roman law continued to be the common law, and in the course of the last three centuries of the old *régime* overwhelmed and destroyed the local customs which had grown up in particular places. The only branch of law which it did not succeed in displacing was the feudal law of rights relating to land. In the *pays de coutumes*, where Teutonic influences were stronger, the common law was custom. But it was a common law with great gaps, which had to be supplied from Roman law. Thus the law of contract was practically Roman. And under the influence of the jurists the principles of Roman law leavened the whole lump. The difficulty of ascertaining the customary law, and the practical inconvenience which ensued, led to a general demand for an authoritative version. The French kings of the fifteenth and sixteenth centuries, particularly Charles VIII. and Louis XII., made vigorous and systematic efforts to meet this demand. The course ordinarily adopted was this. The principal royal judge of the province was instructed to prepare a preliminary draft, with the aid of his subordinate judges and magistrates. Commissioners—two, three, or four in number—were then appointed, and proceeded to hold what we should now call a local enquiry, at which representatives of the three "estates"—clergy, nobility, and commons—were present, and at which the articles of the draft were fully discussed. Articles on which there was a general agreement were at once promulgated by the commissioners in the name of the king. Points of difficulty were reserved for decision by the local *parlement*, and the full text, when finally settled, was formally registered by the *parlement*. In this way the customs of all the provinces had, by the end of the sixteenth century, been reduced to a written and authoritative form.

Reconciliation of Conflicting Customs.—The great work of digesting and promulgating local customs exercised an important influence on the subsequent development of French law. In the first place, the methodical comparison of conflicting customs, the attempt to discover the common principles which underlay them, the systematic grouping and arrangement of the customs when found, supplied an intellectual gymnastic of the most valuable kind, and trained up generations of lawyers and jurists who were imbued with the principles required for successful codification. In the

[1] *Esmein*, p. 718.

next place the customs thus formulated, though purporting to be, and being substantially, a reproduction and declaration of existing customs, yet were promulgated by, and to some extent derived their binding force from, the royal authority, and thus prepared the national mind for the exercise of a systematic control by the supreme legislative authority over the domain of private law.[1] Thus the commissions of the sixteenth century paved the way for the partial codification of the eighteenth and the complete codification of the nineteenth century. When the Convention and the first Napoleon took up their task of codification they found the ground prepared, the general lines of the edifice laid down, some portions of the building completed, and, above all, architects trained by generations of experience. Curiously enough, the only chapter of the new codes which had not come into even partial existence was the law of crimes. For the Penal Code there was no French precedent.

The Impulse to Codification in France.—Of the causes which made for codification in France at the beginning of this century, the most important were probably three. In the first place, a strong sense of the practical evils which arose from diversity of laws, coupled with a passionate desire for national unity. In the next place, the continuous efforts of many successive generations of statesman and lawyers, all tending in the same direction, all aiming, consciously or unconsciously, at the same ideal. And lastly, the fact that the common law of part of the country was wholly, that of the other part largely, based on law which had already been systematised. The text-book of the obscure but immortal law-coach Gaius has supplied the ground plan for all modern European codes.

[1] The so-called *Établissements de Saint Louis* supply a curious illustration of the way in which royal authority was sometimes erroneously attached to a compilation of local customs. They were long believed to have been enacted by Louis IX., but they are now recognised as being the work of a private compiler, who wrote a little before 1272. Their contents are taken partly from a *règlement* made for the provostry (*prevôte*) of Paris, partly from a custumal of Anjou and Maine, partly from an ancient custumal of Orleans (*L'Usage d'Orlénois*). See Viollet, *Établissements de Saint Louis.*

THE CO-OPERATION OF COLONIAL GOVERNMENTS.

[*Contributed by* J. Macdonell, Esq., C.B.]

In the last number of the Journal of Comparative Legislation was published a circular despatch addressed by Mr. Chamberlain to the Governors of the various colonies, in which he invited them to aid in furthering the objects of the Society of Comparative Legislation. Many replies have already been received, and, with scarcely an exception, they are of a cordial and sympathetic nature. Promises of co-operation have been given, and measures have already been taken to give effect to these promises. It is a pleasure to recognise the readiness with which Cabinet ministers, judges, and law officers have offered to aid the work of the Society. We may reasonably hope that substantial benefits will result from their co-operation and from free communication between the colonies and the mother country as to legislation and law generally.

I quote a few of the replies. The first is from the Governor-General of Canada:

Canada, Government House, Ottawa.
May 15th, 1899.

Sir,—With reference to your circular despatch of March 21st last inviting the co-operation of this Government in facilitating the work of the Society of Comparative Legislation, I have the honour to forward herewith a copy of an approved minute of the Privy Council indicating the measures which ministers propose to take with the view of furthering the Society's objects.

I have, etc.,
(Signed) Minto.

The Right Honourable Joseph Chamberlain, P.C., etc., etc., etc.

(Extract from a report of the Committee of the Honourable the Privy Council, approved by his Excellency on May 11th, 1899.)

The Committee of the Privy Council have had under consideration a circular despatch hereto attached, dated March 21st, 1899, from the Right Honourable Mr. Chamberlain, respecting certain information for the Society of Comparative Legislation.

The Minister of Justice, to whom the matter was referred, recommends that copies of the reports of the Supreme Court of Canada and of the Exchequer Court be forwarded to the Society hereafter free of charge.

The minister also recommends that copies of the said despatch be sent to each of the lieutenant-governors of the provinces of Canada and the North-West Territories.

The Committee advise that your Excellency be moved to inform the Right Honourable the Secretary of State for the Colonies of the action taken.

All which is respectfully submitted for your Excellency's approval.

(Signed) JOHN J. MCGEE,
Clerk of the Privy Council.

The acting Under-Secretary of State at Ottawa sends a report from the Attorney-General of the province of Nova Scotia, in which the latter says:

1. The Government will arrange that all colonial Acts of this province shall be forwarded to the Society as soon as published.

2. The Right Honourable the Secretary of State suggests that a half-yearly report by the law officers of the colonies on the decisions of colonial courts on points of law of special interest would be of service to the Society as well as to the Department. Such a work, I may say, it would be difficult for me to personally attend to, but I shall be glad to make an arrangement with the reporters of the Supreme Court to prepare such a digest for the use of this Society.

The reply of the Governor of New South Wales is as follows:

GOVERNMENT HOUSE, SYDNEY.
June 24th, 1899.

SIR,—In reply to your circular despatch of March 21st last, I have the honour to inform you that my ministers have arranged that in future reports on the decisions of the courts of New South Wales on points of law of special interest will be prepared by the local Crown law officers for transmission to the Colonial Office and the Society of Comparative Legislation in the manner suggested in your despatch.

As, however, considerable delay occurs between the delivery of the judgments and the publication of the New South Wales law reports, occasionally so much as five or six months, and in order that no time may be lost between the publication of the decisions and the transmission of the reports, my ministers have further arranged that the reports shall be prepared and transmitted quarterly, immediately on the publication of the law reports, instead of half-yearly, as proposed in your despatch under reply.

With a view of more fully assisting the Society of Comparative Legislation in carrying out its objects, and of securing an earlier publication of the statutes of this colony, and probably a more accurate statement of their contents, my ministers have given instructions for the preparation, at the end of each session of the local Parliament, of an epitome of the Acts passed, for the Society's use.

I trust that these arrangements will meet with your approval, and that the results will prove of assistance to, and facilitate the work of, the Society.

I have, etc.,
(Signed) BEAUCHAMP.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, ETC., ETC., ETC.

The Governor of Queensland forwards copies of reports of the chief decisions in the courts of the colony.

The Premier of Tasmania (Sir E. Braddon) states in a letter of September 13th, 1899:

I have arranged with the Honourable Attorney-General to provide in future half-yearly reports of all Tasmanian cases which are likely to be of special interest.

Lord Ranfurly, the Governor of New Zealand, intimates that his Government will give instructions that copies of the annual volumes of statutes will be forwarded to the Colonial Office for the use of the Society of Comparative Legislation.

It will be seen from the following despatch from Cape Town that the Government of the Cape of Good Hope fully recognise the utility of the work of the Society, and propose to make provision in the Estimates for the purpose of assisting it:

Ministers to Governor.

PRIME MINISTER'S OFFICE, CAPE TOWN.

July 4th, 1899.

Minute.

Ministers have the honour to acknowledge his Excellency the Governor's minute No. 75 of April 27th, 1899, transmitting a circular despatch from the Secretary of State for the Colonies relative to the possibility of facilitating the extended operations of the Society of Comparative Legislation.

Ministers recognising the utility of the Society's scheme are prepared to render assistance, and they propose to make provision upon the estimates for the purpose

(Signed) W. P. SCHREINER.

Sir Walter Hely-Hutchinson, the Governor of Natal, furnishes copies of the Natal law reports and digest, and promises that the Society will in future be supplied with them.

With few exceptions, the Governors of the various West Indian colonies have sent despatches promising their assistance. A few specimens are given to show the generous spirit of co-operation which marks the replies.

The Governor of Jamaica, writing under date of August 11th, 1899, forwards a copy of a memorandum of the Attorney-General, in which he remarks:

In this colony all our laws are more or less based on English statutes, and their interpretation is controlled by the decisions of the courts of the mother country, which are invariably followed by the colonial court. It is seldom, therefore, that a decision by the colonial court would contain anything which would be of service to the Society of Comparative Legislation. I shall be glad, however, to watch the judgments given by the Supreme Court of Jamaica, and should any of them be of such a character as is mentioned in the Circular Despatch from the Secretary of State dated March 21st, 1899, I shall take steps to have it reported, with a view to communicating it to the Colonial Office and the Society of Comparative Legislation.

The Governor of British Honduras writes as follows:

GOVERNMENT HOUSE, BELIZE.

May 10th, 1899.

SIR,—In reply to your despatch marked circular of March 21st last, requesting the assistance of law officers of the colonies in aid of the Society of Comparative

Legislation, I have the honour to enclose for your information and for transmission to the Secretary of the Society, a copy of a minute which I have received from the Attorney-General undertaking to report any point of special interest which may be decided by the Supreme Court of the colony.

I have, etc.,
(Signed) D. WILSON,
Governor.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P., ETC., ETC., ETC.

The Honourable the Attorney-General to the Honourable the Colonial Secretary.

I shall be very happy to report any point of special interest which may be decided by the Supreme Court, but no such case has occurred recently.

(Signed) F. M. MAXWELL,
Attorney-General.

May 5th, 1899.

The official reply from Barbados is as follows:

GOVERNMENT HOUSE.
August 4th, 1899.

SIR,—With reference to the third paragraph of your circular despatch of March 21st last, asking whether half-yearly reports by the law officers on the decisions by colonial courts on points of law of special interest could be forwarded to the Society of Comparative Legislation, I have the honour to inform you that the Solicitor-General, who was asked to report on all points of law of special interest, states that there have been no decisions by the Barbados law courts on points of law of special interest during the last half-year.

I have, etc.,
(Signed) J. S. HAY.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P., ETC., ETC., ETC.

GOVERNMENT HOUSE, ACCRA.
July 27th, 1899.

SIR,—Referring to your circular despatch of March 21st, with regard to furthering the work undertaken by the Society of Comparative Legislation, I have the honour to inform you that the Chief Justice and Puisne Judges have arranged to communicate to the Attorney-General (who seldom has to appear in civil cases, and would as a rule be unaware of the decisions of the court in such cases) decisions on points of law of special interest; and the Attorney-General will then—having if necessary referred to the notes of evidence—report to the Colonial Secretary, who will transmit the report to the Society.

2. The request contained in the second paragraph of the despatch has been noted for attention.

I have, etc.,
(Signed) F. M. HODGSON,
Governor.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P., ETC., ETC., ETC.

The replies from the Governments of the Windward and Leeward Islands are as follows:

GRENADA.
May 20th, 1899.

SIR,—I have had the honour to receive your circular despatch of March 21st last, suggesting, for the convenience of the Colonial Office as well as of the

Society of Comparative Legislation, the rendition of a half-yearly report by the law officers of the colonies on the decisions by colonial courts on points of law of special interest.

2. Your wish in this matter has been communicated to the administrators of St. Lucia and St. Vincent, as well as to Mr. Leslie Probyn, the Attorney-General of Grenada.

3. The last-named officer points out that, while there is no system of law-reporting in Grenada, any case of interest in the direction indicated could be reported upon by him, and he has readily consented so to do.

4. Mr. Probyn further remarks that the Chief Justice here usually writes his decisions, so that all that will be necessary for the former to do will be to prefix a short explanatory statement of the particular case, the accuracy of which can be tested locally by reference to the barristers who took part in the litigation.

5. So as to enable the Colonial Office to furnish in future the Society with a copy of each Ordinance, I have now directed that seven copies instead of six, as heretofore, shall be transmitted to Downing Street.

I have, etc.,

(Signed) ALFRED MOLONEY,

Governor.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P., ETC., ETC., ETC.

GRENADA.

May 31st, 1899.

With reference to your circular despatch of March 21st last, I have the honour to transmit Administrator King-Harman's despatch No. 101 of the 17th instant, from which you will observe that in future a copy of each St. Lucia Ordinance will be forwarded for the Society of Comparative Legislation. The Attorney-General of that island has also undertaken to supply copies of the judgments of the royal court as desired.

(Signed) ALFRED MOLONEY,

Governor.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P., ETC., ETC., ETC.

GOVERNMENT HOUSE, ST. LUCIA.

May 17th, 1899.

SIR,—With reference to the Secretary of State's circular despatch of March 21st, 1899, covered by your Excellency's minute (ss. 850-899 of May 10th), on the subject of assistance to be given to the Society of Comparative Legislation in collecting of information on legal subjects, I have the honour to inform your Excellency that in accordance with the instruction of the Secretary of State a copy of each Ordinance as passed in this colony shall in future be furnished for transmission to the Society.

2. The Attorney-General expresses the pleasure it will give him to assist the Society by furnishing half-yearly or from time to time, as may be thought convenient, printed copies of the judgments of the royal court on points of law of special interest.

I have, etc.,

(Signed) C. A. KING-HARMAN,

Administrator.

HIS EXCELLENCY SIR ALFRED MOLONEY, K.C.M.G., ETC., ETC., ETC.

GOVERNMENT HOUSE, ANTIGUA.

July 10th, 1899.

SIR,—I have the honour to acknowledge the receipt of your circular despatch of March 21st last informing me of the valuable work already done by the Society of Comparative Legislation, and that it had secured the services of Mr. John Murray as the publisher of its *Journal*.

2. I have communicated the contents of this circular despatch to the Attorney-General, and the same course will be followed with regard to the assistants to that officer in St. Kitts and Dominica.

3. In order to comply with the request made in the concluding portion of paragraph 3 of this despatch, I beg to refer you to the letter on this subject from the Chief Justice which accompanied Sir F. Fleming's despatch No. 218 of May 18th, 1896, and to acquaint you that his Honour will be asked to reconstitute the committee, owing to two of the members who are named by Sir Henry Wrenfordsley in his letter of May 11th, 1896, having left the colony. It may be necessary also to appoint another secretary.

4. I regret that the subject matter of your circular despatch under acknowledgment has been overlooked until now, and that apparently no report has been received from the committee appointed in 1896; but I trust that, when the attention of the Chief Justice has been called to this despatch and to previous correspondence, the result will be a report from the committee for the first half of this year.

5. I have meanwhile given instructions which will have the effect of causing additional copies of the enactments of this colony to be forwarded to you, so that you may be enabled to furnish the Society of Comparative Legislation as explained in paragraph 2 of your circular despatch of March 21st.

I have, etc.,

(Signed) GEORGE MELVILLE.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P., P.C., ETC., ETC., ETC.

GOVERNMENT HOUSE, ANTIGUA.

August 14th, 1899.

SIR,—With reference to paragraph 3 of my despatch No. 409 of the 10th ultimo, I have the honour to transmit for your information copy of a letter which I have received from the Chief Justice in reply to my letter to him of July 10th, a copy of which is also enclosed.

I have, etc.,

(Signed) GEORGE MELVILLE.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P., P.C., ETC., ETC., ETC.

Comparative Legislation.

SUPREME COURT, ANTIGUA, B.W.I.

August 11th, 1899.

SIR,—In reply to your letter of July 10th, 1899, on the subject of the operation of the Society of Comparative Legislation, I beg to say that I duly appointed a committee, as also a secretary in the person of the present acting Mr. Justice Major, who is now absent at Dominica. I am sure that we are all anxious to contribute to the success of the Society.

2. As regards the colony, however, we have not had "decisions" on points

of law "of any special interest." I presume that the ordinary criminal work of the colony would not be interesting or useful?

3. As regards the work in Antigua, I have had to carve out or apply a system of procedure in equity in the management of seventeen large estates over which I was appointed receiver.

4. In this respect Barbados seems to be provided with local enactments which meet the case of insolvent estates.

5. As regards half-yearly reports, we have really none to make. I quite agree that it would be useful if a copy of each colonial enactment should be forwarded, but this is rather within the scope of the work of the Colonial Secretary.

6. As a specimen of our local drafting I have nothing more original to offer than a copy of the enactment which I have the honour to enclose and to ask you to forward, No. 17 of 1899. The subject is a popular one.

I have, etc.,

(Signed) HENRY T. WRENFORDSLEY,
Chief Justice, Leeward Islands.

HIS EXCELLENCY THE ADMINISTRATOR OF ST. JOHN'S.

GOVERNMENT HOUSE, ANTIGUA.
July 10th, 1899.

SIR,—With reference to Sir F. Fleming's despatch No. 212 of August 30th, 1895, and to your letters of September 2nd, 1895, and May 11th, 1896, in connection with the Society of Comparative Legislation, I have the honour to transmit herewith copy of a further circular despatch which I have received from the Secretary of State on this subject.

2. In replying to this despatch I have expressed to Mr. Chamberlain my regret that action on it has been overlooked until now, and that apparently, from previous correspondence, no report has been received from the committee appointed by your Honour in 1896; but I have ventured to express the hope that when your attention has been called to the further communication from Mr. Chamberlain of March 21st, that the result will be a report for the first half of this year.

3. The Attorney-General, Mr. W. H. Stoker, has been communicated with on the subject, and has stated that he will be very happy to become a member of this committee. It may be necessary to appoint another secretary; but I would infer from the terms of your letter of May 11th, 1896, that the Chief Justice and the Puisne Judges of this colony for the time being are intended to be members of the committee.

I have, etc.,

(Signed) GEORGE MELVILLE.

HIS HONOUR SIR HENRY T. WRENFORDSLEY, KT., CHIEF JUSTICE, ETC., ETC., ETC.

The reply of the acting Governor of Sierra Leone refers to questions of native customs coming before the courts of that colony. On such matters the Society particularly desires communications. Nothing can be more interesting to lawyers than descriptions at first hand of the conflicts of European ideas of law and morals with strong, vigorous native usages or customs.

GOVERNMENT HOUSE, FORT THORNTON, FREETOWN, SIERRA LEONE.
May 3rd, 1899.

SIR,—With reference to paragraph 2 of your circular despatch of March 21st, 1899, on the subject of facilitating the work of the Society of Comparative Legislation, I have the honour to inform you that I am arranging for an additional copy of every enactment of this colony to be sent to you in future for that Society.

2. With reference to paragraph 3 of the same despatch I forward herewith copies of the opinions of the Attorney-General and Chief Justice with regard to the suggestion that they should furnish half-yearly reports on the decisions of the colonial court here on points of law of special interest. The interest of cases in Sierra Leone seems to be derived rather from the peculiarities of native character and custom which they illustrate than from the points of law they give rise to. I have, however, directed the law officers to bear your wishes in mind, and to furnish in the first week of January and the first week in July of each year a report on any decisions which they think might with advantage be communicated to the Society of Comparative Legislation.

I have, etc.,
(Signed) M. NATHAN,
Acting Governor.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P., ETC., ETC., ETC.

Attorney-General to Colonial Secretary.

HONOURABLE COLONIAL SECRETARY,—In regard to civil business, in my opinion it would be impossible for the law officers to furnish a report on decisions by the courts of this colony on points of law of special interest, as they rarely, if ever, attend the sittings, and there are no reporters who can be relied on.

In regard to criminal work it might be done, but decisions of public interest are so few and far between as hardly to make it worth while.

P. C. S.,
April 26th, 1899. *A.-G.*

Chief Justice to Colonial Secretary.

HONOURABLE COLONIAL SECRETARY,—Points of law of special interest can but seldom arise here, as English law and procedure are followed. The law of contract is exactly the same, while the torts created by local Ordinances are of no special interest from a legal point of view. *Written* judgments are very seldom given. I have only given one in fifteen months.

There is no reporter attached to the court, as in England, and I doubt if one could be found.

* * * * * *

I shall be pleased, when I write judgments, to send them to the Attorney-General for perusal, and allow him to take a copy should he think anything in them would be worth sending to the Society.

(Signed) GEORGE STALLARD,
April 30th, 1899. *Chief Justice.*

Sir Robert Biddulph, the Governor of Gibraltar, writes :

2. Additional copies of all enactments shall in future be forwarded as requested ; and with regard to reports, the Attorney-General informs me that the cases brought for trial before the Supreme Court of Gibraltar are, comparatively

speaking, very few, and seldom raise any interesting points of law, but that should any case of sufficient interest come to his knowledge a report will be furnished.

The official reply from Malta is as follows:

THE PALACE, VALLETTA.
April 29th, 1899.

SIR,—I have the honour to acknowledge the receipt of your circular despatch of March 21st, and to state that your request for an additional copy of every local enactment, to enable you to place it at the disposal of the Society of Comparative Legislation, has been duly noted and will be complied with.

2. With regard to the third paragraph of your circular despatch, I beg to state that the Crown Advocate has been requested to state his views as to the means to be adopted in preparing a half-yearly report on the decisions of the Malta courts on points of law of special interest. The copies of decisions themselves will be forwarded to the Colonial Office periodically, in accordance with the instructions conveyed by your despatch noted in the margin.

I have, etc.,
(Signed) F. GRENFELL,
Governor.

THE RIGHT HONOURABLE J. CHAMBERLAIN, M.P., ETC., ETC., ETC.

The Governor of Cyprus states:

an additional copy of every Bill passed by the Legislative Council will in future be furnished. As regards the point referred to in paragraph 3 of your despatch the decisions of Supreme Court on points of law of special interest are printed annually, and copies of the Cyprus law reports since the occupation are forwarded and will in future be forwarded as soon as published.

The answer of the Governor of the Mauritius is as follows:

GOVERNMENT HOUSE, MAURITIUS.
July 22nd, 1899.

SIR,—With reference to your circular despatch of March 21st last, I have the honour to inform you that the Procureur-General reports that it would be difficult in this colony to draw up a special half-yearly report on decisions on points of law, as the Ministère Public is not regularly in court.

2. Mr. Thibaud, the additional substitute Procureur-General, however, prepares an annual report, in which he gives all cases of interest, and I have directed that a copy thereof be regularly supplied to the Colonial Office and the Society of Comparative Legislation in future, as it may be found of interest.

3. Under separate cover, copies of the reports for the years 1896 and 1897 have been transmitted to you and to the Society of Comparative Legislation.

4. The report for 1898 has not yet been issued.

I have, etc.,
(Signed) CHAS. BRUCE,
Governor.

THE RIGHT HONOURABLE J. CHAMBERLAIN, M.P.,
Secretary of State for the Colonies.

The Governor of St. Helena promises to

bear the additional requirements of the Society in mind in submitting copies of local enactments to you in the future. A note has also been made regarding cases involving points of law of special interest on which decisions have been given by the Supreme Court. There have been, however, few cases in this island of special importance.

The Governor of Fiji writes as follows :

FIJI, GOVERNMENT HOUSE, SUVA.

May 29th, 1899.

SIR,—In reply to your circular despatch of March 21st last, I have the honour to inform you that an additional copy of each Ordinance as enacted will be transmitted to you as directed, and to enclose a copy of a minute by the acting Attorney-General on the subject of half-yearly reports on points of law of special interest.

I may add that Mr. Udal, the Attorney-General, has in course of preparation a report of Supreme Court judgments that involve various points of interest, which he hopes to complete while on leave, and I have no doubt that a copy will be available for the Society of Comparative Legislation. Your despatch will be brought to Mr. Udal's notice upon his return to the colony.

I have, etc.,
(Signed) G. T. M. O'BRIEN.

THE RIGHT HONOURABLE JOSEPH CHAMBERLAIN, M.P.,
Secretary of State for the Colonies.

(Copy of a Minute by the Acting Attorney-General on the subject of half-yearly reports on points of law of special interest.)

There are very few cases of special interest brought on in this colony, and whenever there is one it is usually reported in full in the local papers. Copies of the judgments so reported could be forwarded. As I am only acting, I could not say what the Attorney-General would do, but I know that Mr. Udal has a number of reports in print, but over those I have no control.

(Signed) C. H. H. IRVINE.

May 26th, 1899.

The reply of the Governor of Ceylon is as follows :

QUEEN'S HOUSE, COLOMBO, CEYLON.

August 31st, 1899.

SIR,—In reply to your Circular Despatch of March 21st last, I have the honour to inform you that I have directed that an additional copy of every legislative enactment be in future sent to you for the Society of Comparative Legislation, and have also instructed the Attorney-General to arrange for the transmission of the half-yearly reports of the nature indicated in the last paragraph of the Circular Despatch.

I have, etc.,
(Signed) E. NÖEL WALKER.

THE RIGHT HONOURABLE J. CHAMBERLAIN, M.P., ETC., ETC., ETC.

A despatch from the Straits Settlements promises that copies of all local enactments will be furnished to the Society. In this despatch is the following observation, which probably is due to a slight misunderstanding of the nature of the report which is desired. Nothing of a controversial character is expected or wished for ; and we are not without hope that the authorities at Singapore will see their way to give the support which other colonies are prepared to render.

As regards the suggestion contained in Parapraph 3 of the circular that a half-yearly report by the law officers of colonies on the decisions by colonial courts on points of special interest should also be furnished, the following objections to this proposal have been brought to my notice. Such a report to be of practical use might and often would involve criticism by the Attorney-General of the decisions reviewed, and this criticism if divulged might lead to tension between the judges and the Attorney-General.

Whatever be the result of the experiment which the Society is enabled to make by reason of the Secretary of State's suggestion and invitation, these promises of co-operation are a new departure in the relations of the colonies to each other and to the mother country.[1]

[1] See Hecren's *Historical Researches*, 2, 24, for remarks on the effect of communication of ideas between colonies and their mother country in ancient times; also Hertzberg's *Geschichte von Hellas und Rom*, 1, 67.

THE HAGUE CONVENTION ON MATTERS OF PRIVATE INTERNATIONAL LAW.

[*Contributed by* ERNEST J. SCHUSTER, ESQ.]

The Contracting States.—A Convention relating to matters of some importance was entered into by a number of States on November 14th, 1896, and was, together with a supplementary Convention, dated May 22nd, 1897, ratified by the contracting powers. The final protocol recording the ratifications is dated April 27th, 1899. The contracting States are: Austria-Hungary, Belgium, Denmark, France, Germany, Italy, Luxemburg, Netherlands, Portugal, Russia, Roumania, Sweden, Norway, and Switzerland, and therefore include every important European State, with the sole exception of the United Kingdom and Turkey.

The title of the Convention is somewhat misleading. The matters with which the Convention deals are not usually comprised under the head of "Private International Law," and if a common name is to be given to them, they may more fitly be described as "Matters of International *Litigation*."

The Convention consists of seventeen articles, and relates to the following subjects:

Subjects of the Convention.—1. *Service.*—It is provided that the competent authorities of any of the contracting States shall be bound to effect the service of any writ, summons, or other similar document issued in any civil or mercantile cause or matter within the jurisdiction of any other contracting State, unless such document in the opinion of the government of the State in which service is to be effected is of a nature calculated to interfere with the sovereign rights or to threaten the security of such State. A receipt signed by the party served and legalised by a public authority, or a certificate of service issued by the authority effecting the service, written on or affixed to a duplicate of the document of which service has been effected, is to be deemed sufficient evidence of the service (Arts. 1-3).

2. *Letters of Request Addressed to Foreign Courts* (*Taking Evidence Abroad, etc.*).—A judicial authority of any contracting State may by letters of request ask a judicial authority of any other contracting State to allow interlocutory proceedings to be taken before it in connection with any civil or mercantile cause or matter pending in the country from which the

request is issued; and the judicial authority to whom the letter of request is addressed is bound to comply with it, unless there is a doubt as to the authenticity of the document, or unless the proceedings required to be taken do not, in the country to which the request is addressed, come within the competence of courts of law. The request may also be refused on similar grounds as the request to effect service of a document (Arts. 5-9).

The principal object of these articles is to facilitate the taking of evidence outside of the country in which an action is pending; but the words are wide enough to allow other interlocutory proceedings to be taken outside of the jurisdiction.[1] As difficulties might arise, owing to the varieties of procedure used in different countries, it is provided by Art. 10 that the local procedure is to be applied as a general rule; but that if the authority issuing the request asks for the application of other methods of procedure, such methods are to be applied, though unknown to the law of the country receiving the request, unless they are expressly forbidden by such law. This article would, for instance, enable a German or French court to allow witnesses to be examined, cross-examined, and re-examined according to the English method, although such method would not be applied in German or French proceedings.

3. *Security for Costs and Enforcement of Judgments for Costs.*—No subject of any contracting State will, if domiciled in any contracting State, have in future to give security for costs as plaintiff or intervening party in any action brought in the courts of any other contracting State, on the ground of not being a subject of such State, or not being domiciled or resident in the territory of such State (Art. 11). On the other hand, it is provided (by Art. 12) that a judgment for costs pronounced by a court of one of the contracting States against a plaintiff or intervening party, who, by virtue of Art. 11, was dispensed from the duty of giving security for costs, is to be enforced by the courts of any other contracting State, on proof of the authenticity of the judgment and of the fact that such judgment is no longer appealable.

4. *Right to Sue and be Sued in Formâ Pauperis.*—This right is conceded to persons domiciled in any contracting State in the courts of any other contracting State, subject to the regulations to which persons domiciled in the country in which the action is brought have to submit (Arts. 14-16).

5. *Personal Arrest.*—No order of personal arrest, whether *pendente lite* or by way of execution of a judgment, in any civil or mercantile matter, shall, within the jurisdiction of any contracting State, be made against a subject of any other contracting State, except in a case in which the issue of such an order would also be lawful in respect of any subject of the State in which it is to be issued (Art. 17).

[1] The French and German texts do not exactly correspond. The former says, "Soit un acte d'instruction, soit d'autres actes judiciaires"; the latter, "Einer richterlichen Prozesshandlung oder anderer gerichtlicher Handlungen."

Abstention of Great Britain.—It will be seen that these provisions offer considerable advantages to the subjects of the contracting States who have to resort to litigation in any other contracting State, and that they also facilitate the obtaining of foreign evidence in cases in which all parties are domiciled in the same country. The question arises why in respect of this Convention the United Kingdom has maintained a position of "splendid isolation" shared by no other important European country except Turkey. If no inconvenience were felt in this country with reference to the subject-matters in question, something might be said in favour of the freedom gained by this policy of abstention, but the present inconveniences as regards service out of the jurisdiction and as regards the taking of evidence abroad are so great that it seems surprising that the opportunity of removing them has not been taken advantage of.

Service by English Plaintiffs: Its Difficulties.—An English plaintiff who has obtained leave under Order XI., Rule 1, to serve notice of a writ on a defendant residing out of the jurisdiction may find himself confronted by almost insurmountable difficulties. In some foreign countries the public authorities, whether rightly or wrongly, seem to take the view that the service of the notice of a writ should not be effected by any person except by one of the official process-servers, and that the service of such notice on the part of any other person constitutes a usurpation of authority punishable by imprisonment. On the other hand, the official process-servers are not allowed to swear the affidavit of service required by Order XIII., Rule 2 (see *Ford* v. *Miescke*, 16 Q. B. D. 57). The course most frequently resorted to in such cases seems to be for the plaintiff or some person acting under his instructions to travel abroad in person and to serve the notice, the affidavit of service being then sworn on his return to England; but this course involves expense and also the risk of collision with the foreign authorities.

Taking Evidence Abroad.—In respect of taking evidence abroad similar difficulties arise in some foreign countries. In those countries no person not being a judge or other authorised person is entitled to administer an oath, and an English commissioner runs the risk of imprisonment on the ground of having usurped an official authority not conferred on him by the local law. If a letter of request to a foreign court is issued, there is no means, in the absence of an international treaty, to compel such foreign court to comply with it, and the foreign court will not in any case depart from its ordinary methods of procedure, by which circumstance the value of its assistance to English tribunals must be greatly lessened. As regards affidavits to be sworn abroad, there is a table in the *Annual Practice* (Edition for 1900, p. 1038) which calls for the following observations: It is said that affidavits in Germany are to be sworn before a "Judge of the German High Court." As no court exists in Germany which could possibly be described as the German High Court (the only federal court in Germany being the Supreme Court in Leipzig, before the judges of which affidavits could clearly *not* be sworn),

this statement must inevitably mislead practitioners relying on it. Moreover, English affidavits are frequently drawn in a form which in the absence of international arrangements would make it impossible for a German or other foreign judge to administer an oath as to their contents, and no foreign judge can be compelled to allow an affidavit to be sworn before him. As regards other foreign countries, the British consul, vice-consul, etc., are mentioned; but it should be pointed out that an affidavit sworn by a foreign subject before a British consul in a foreign country is of no value whatever. British subjects are of course bound by the Commissioners for Oaths Act, 1899, s. 7, but a foreign subject swearing falsely before a British consul in a foreign country could not be prosecuted for perjury either in England or in his own country, as the criminal law of foreign countries does not punish a false oath unless it was sworn before a judicial authority of the country in which the oath was sworn. (This observation also applies to the testimony of witnesses examined in a foreign country before English commissioners.)

Detriment to English Traders.—The difficulties I have pointed out both as regards the service of process and the obtaining of evidence in foreign countries would of course cease to exist if arrangements similar to those contained in the Hague Convention could be entered into with the parties to that Convention. There can be no doubt that these difficulties prevent many English traders from entering into foreign business.

SUZERAINTY.

[*Contributed by* WALLWYN P. B. SHEPHEARD ESQ., M.A.]

SUZERAINTY is a term applied to certain international relations between two sovereign States, whereby one, whilst retaining a more or less limited sovereignty, acknowledges the supremacy of the other. Such a relation may be either feudatory, by the grant at some early period of a sovereignty as a fief; or conventional, by some treaty of peace or alliance. The difficulty is to define what juridical relations are implied by the use of the term "suzerain" in the language of a treaty; and, further, to settle whether any given relations established by a treaty may be properly referred to as a suzerainty.

Its Feudal Sense.—Regarding only its feudal origin, the term suzerain[1] meant lord paramount—one who had granted a sovereignty over some defined territory to be held of him as a fief, and had accompanied the gift with an express grant of jurisdiction. These were feudatory States. Vattel refers to them as follows: "The Germanic nations introduced another custom, that of requiring homage from a State either vanquished or too weak to make resistance. Sometimes even a prince has given sovereignties in fee, and sovereigns have voluntarily rendered themselves feudatories to others."

Mr. Hall, in his work on international law, has limited his definition of a suzerainty to that which arises from the feudal relationship. He says: "States under the suzerainty of others are portions of the latter which during a process of gradual disruption have acquired certain of the powers of an independent community, such as that of making commercial conventions or of conferring their exequatur upon foreign consuls. Their position differs from that of the foregoing varieties of States [the learned author had previously referred to independent sovereign States, tributary States, and protected States] in that a presumption exists against the possession by them of any given international capacity. A member of a confederation or a protected State is *primâ facie* independent, and consequently possesses all rights which it has not expressly resigned. A State under the suzerainty of

[1] In the *Glossarium Manuale ex Magnis Glossariis* of Du Cange (1774), "Dominus Principalis" is referred to as "Seigneur Paramount" and "Seigneur Suzerain." The *Law Dictionaries* of Cowel, Cunningham, Jacob, and Tomlin distinguish between the feudal status of "Lord Paramount," "Lord Mesne," and "Tenant Paravail."

another being confessedly part of another State has those rights only which have been expressly granted to it, and the assumption of larger powers of external action than those which have been distinctly conceded to it is an act of rebellion against the sovereign."

Suzerainty by Treaty.—But feudal rules seem inapplicable to the ascertainment of the nature of the relations created by treaty between two sovereign States, wherein one is to acknowledge the suzerainty of the other, who is termed the Suzerain Power. When such a treaty relation has been established it must be deemed to arise from an unequal alliance between the States which permanently lessens the sovereign powers of the inferior State. It would come within the category—to use the division of Grotius—of unequal leagues. "Unequal leagues," states Grotius, "are made not only between the conquerors and conquered, but also between people of unequal power, even such as never were at war with one another."

Upon the close of a war the treaty of peace, or without a war a treaty of alliance, may embody in its terms the surrender by the inferior Power to the superior Power of certain sovereign rights: this may be more advantageous for both than absolute conquest. Any degree of permanent subjection of the inferior to the superior Power raises a relation of suzerainty under limitations which, if not defined by the treaty, must conform to some accepted principles of international jurisprudence.

Unequal Alliances and Sovereignty.—According to Grotius, Puffendorf, and Vattel, in unequal alliances the inferior Power remains a Sovereign State. Its subjects or citizens owe allegiance only to their own sovereign. Over their disputes and internal dissensions the Suzerain Power, as such, has no jurisdiction. In short, the weaker Power may exercise the rights of sovereignty so long as by so doing no detriment is caused to the interests or influence of the Suzerain Power. It follows that the inferior Power must in all alliances with other States be controlled by its suzerain. If either State engages in war with a third Power, consequences ensue to the suzerain relationship which have to be considered. If either Power be conquered by a third power, the suzerainty would be terminated.

Views of Grotius and Puffendorf.—If, as we conceive, the relation of suzerainty is the outcome of a treaty of unequal alliance, the effect of such an alliance upon the sovereignty of the inferior State becomes the material point, for it involves the right of such State to appeal to the law of nations. We quote at some length the views of Grotius, Puffendorf, and Vattel, whose writings have exercised, and still exercise, either directly or mediately, through the works of later publicists, a dominant influence on modern statesmanship and on public opinion.

"The first question," says Grotius,[1] in his analysis of the relations between allied States, "is whether a Power inferior to another by virtue of a

[1] Grotius, *De Jure Belli ac Pacis*, with Notes by Barbeyrac. English translation published in London, 1738.

treaty of unequal alliance may have the sovereignty." "By unequal alliance," Grotius explains, "is meant not such as is made between two Powers whose strength is unequal, but when by the treaty some lasting preference is given, as where one is obliged to maintain the sovereignty of the other."

Grotius goes on to say: "Andronicus Rhodius rightly observes, after Aristotle, that this is proper to friendship between unequals; that the more honour be given to the more powerful and the more assistance to the more weak. To the inequality in question may be referred some of those rights which are now called right of protection, right of patronage, and a right termed right of Mundiburgium, as also that which mother-cities had over their colonies among the Grecians. . . . Livy, concerning that ancient league between the Romans, who were become absolute masters of Alba, and the Latins descended from Alba, says that in that treaty the Romans 'were acknowledged superiors.' We know what Proculus replied to this question—*viz.* 'that every people that does not depend on another is free, even though by a treaty of alliance they are bound to maintain and reverence the majesty of another people.' If, then, a nation bound by such a treaty remains yet free, and not subjected to the power of another, it follows that it still retains its sovereignty. And Proculus adds 'that such a clause inserted in a treaty of alliance imports only that one nation is superior, and not that the other is not free.' The word 'superior' ought to be understood here *non potestate sed auctoritate et dignitate.* Nations who are inferior by a treaty of 'alliance are under the protection of the people who are their superior in dignity.' 'They are under their protection, not under their dominion,' as Sylla speaks in *Appian.* 'On their side, and not under their subjection,' as Livy says. And Cicero, in his Second Book of *Offices*, speaking of those times when virtue reigned amongst the Romans, says, 'They were the protectors and not the masters of their allies.' To which agrees that of Scipio Africanus the Elder: 'The people of Rome had rather engage men by kindness than by fear, and gain foreign nations by protection and alliance than subject them by hard bondage'; and what Strabo relates of the Lacedemonians after the coming of the Romans into Greece: 'They continued free, contributing nothing but what they were obliged to do as friends and allies.' As private protection takes not away personal liberty, so public protection does not the civil, which cannot be conceived without sovereignty. . . . The superior ally has a right to compel the inferior to stand to the articles of the treaty, and, upon refusal, to punish him. But neither is this peculiar to unequal alliances; the same thing takes place between equal allies.

"From what has been said of equal leagues, we may easily understand what is meant by unequal ones, which inequality may respect either the stronger or the weaker. That of the stronger is, when assistance is promised, but none required again, or when more is promised on that side than on the other. . . . And these are such as do lessen or not lessen the sovereign

jurisdiction of the inferior Power. An alliance that lessens the sovereign jurisdiction is such an one as was the second league between the Romans and the Carthaginians, in which it was provided that the Carthaginians should make no war without the leave of the Romans. . . . In an unequal alliance that does not lessen the sovereignty the terms imposed are either permanent or not. Those that are not permanent are such as oblige the payment of the forces employed in the present service, the demolishing fortifications, the quitting some places, the giving hostages, the delivering up elephants and ships. The conditions that are permanent are such as oblige all reverence and honour to the other's power and majesty. Next to this is that they account the friends and enemies of the other party theirs, that they allow no passage through their country, nor provisions to any troops that belong to those they are at war with; as also these less considerable articles, as that they shall not fortify such and such places, nor lead an army thither, nor have above such a number of vessels, nor build any city, nor traffic, nor levy soldiers in certain places, nor fight against their allies, nor supply their enemies with provisions, nor receive those who come from such and such parts; that they renounce all former treaties with others;—of all which you may see instances in Polybius, Livy, and other authors."

Puffendorf, in his work on *The Law of Nature and Nations*, follows very closely the analysis of unequal leagues given by Grotius.

Vattel.—Vattel is not very clear as to the independent sovereignty of inferior Powers in unequal alliances. In his work on *The Law of Nations, or Principles of the Law of Nature as Applied to the Conduct of the Affairs of Nations and Sovereigns*, he says:

"Every nation that governs itself under what form soever without dependence on any foreign Power is a Sovereign State. . . . We ought therefore to account as Sovereign States those which have united themselves to another more powerful by an *unequal alliance*, in which, as Aristotle says, to the more powerful is given more honour, and to the weaker more assistance.

"The conditions of those unequal alliances may be infinitely varied; but whatever they are, provided the inferior ally preserve to itself the sovereignty or the right of governing its own body, it ought to be considered as an independent State, that keeps up its intercourse with others under the authority of the law of nations.

"Consequently, a weak State, which in order to provide for its safety places itself under the protection of a more powerful one, and engages in return to perform several offices equivalent to that protection, without, however, divesting itself of the right of government and sovereignty,—that State, I say, does not on this account cease to rank among the sovereigns who acknowledge no other law than that of nations."

Vattel, after referring to tributary States, and analysing the condition of Feudatory States, goes on to say: "But a people that has passed

under the dominion of another is no longer a State, and can no longer avail itself of the law of nations. Such were the nations and kingdoms which the Romans rendered subject to their empire; the generality even of those whom they honoured with the name of friends and allies no longer formed real States. Within themselves they were governed by their own laws and magistrates, but without they were in everything obliged to follow the orders of Rome; they dared not of themselves either to make war or contract alliances, and could not treat with nations."

Views of Modern Publicists.—Sir W. H. Rattigan, in his work on *The Science of Jurisprudence*, says that "A State may by its free act surrender a part of these [sovereign] rights and accept a subordinate position under a more powerful State. In such a case the former is regarded as the vassal of the latter, and its international status is restricted accordingly. In India we have numerous examples of semi-sovereign States answering to both vassal and protected States. The principalities of Kashmir, Baroda, Mysore, and Hyderabad belong to the former category, and Cabul to the latter. The former, like the Indian nations under the political control of the United States, are regarded as having a semi-independent position, not as States, not as nations, not as possessed of the full rights of sovereignty, but as a separate people, with the power of regulating their internal and social relations. They are in fact 'dependent political communities' or suzerainties, holding such relations to the British Indian Government that they are considered as being so completely under the sovereignty and dominion of the latter that any attempt to acquire their lands or to form a political connection with them would be considered as an invasion of our territory and an act of hostility towards the British Government. Their subjects are for international purposes in the same position as British subjects."

This passage from Sir W. H. Rattigan's work seems to associate suzerainty with the complete dependence, even to the loss of all sovereignty, of the Inferior Power. We extract from the writings of another modern writer some passages which, although leaving undefined the term suzerainty, clearly refer to that relationship as being compatible with the sovereignty of the Inferior Power.

Sir Sherston Baker, in his work bearing the title of *First Steps in International Law*, says: "Sovereign and independent States are sometimes restricted in their power to make new treaties by the conditions of alliance already formed with others. Such limitation affects the *exercise* of the power of negotiating treaties, but is not regarded as a modification of the *power* itself. . . . A feudal dependency or vassalage does not necessarily impair the sovereignty of a vassal State. A Power having given a sovereignty in fief to another, the sovereign of the latter has rendered himself voluntarily feudatory to the grantor; and the constitution of a fief causes certain private rights and reciprocal duties to arise between the suzerain (*Dominus feudi*) and the vassal, particularly that of a mutual

fidelity, so they may not make war on each other. But the homage does not prejudice the territorial rights of the vassal nor his relations with foreign States unless these relations destroy the feudal connection. Thus there was a nominal vassalage of Naples to the Papal See prior to 1818. Great Britain possesses a suzerainty over the Transvaal Republic, the latter being forbidden by the treaty of 1884 to enter into treaties with any foreign State except the Orange Free State."

From these observations of Sir Sherston Baker we infer that he applies the term suzerainty to any treaty relation between two States which suspends the right of one to enter into alliances with other Powers. To this extent the one Power is controlled by treaty of unequal alliance to acknowledge the supremacy of the other. Hence arises what we term conventional suzerainty as distinguished from that established by the feudal system.

Suzerainty in India.—Sir Courtenay Ilbert, in his work on *The Government of India*, gives a Digest of Statutory Enactments relating to India. In a supplemental part to that digest are contained definitions of expressions in the digest. The author adopts as to the expressions "British India" and "India" the interpretation given in the Interpretation Act, 1889, and in the Indian General Clauses Act, 1897.

By this Interpretation Act the expression "India" means British India (as defined by the Act), "together with any territories of any native prince or chief under the suzerainty of her Majesty exercised through the Governor-General of India," etc. In a note the learned author says "the expression 'suzerainty' is substituted by the Interpretation Act for the older expression 'alliance,' as indicating more accurately the relation between the rulers of these States and the British Crown as the paramount authority throughout India. It is a term which is perhaps incapable of precise definition, but which is usefully employed to indicate the political authority exercised by one State over another and approximating more or less closely to complete sovereignty."

What Implied in Suzerainty.—We may sum up, with the aid of the exhaustive analysis by Grotius of the sovereignty of States, all that may be fairly implied by the use of the term "suzerainty" as follows: First, the suzerainty of the Superior Power gives no right of intervention in questions which may arise between the citizens of the other Power *inter se*, nor in its purely domestic affairs. Secondly, the Inferior Power is absolutely precluded from all alliances with Foreign Powers, for these may impair its allegiance to the paramount or Suzerain Power. Thirdly, the Suzerain Power incurs the liability, under penalty of losing its suzerainty, of defending the weaker Power in the event of its being attacked by any third Power; and conversely the interference by any third Power with the inferior Power constitutes a *casus belli* with the Suzerain Power. Fourthly, the suzerainty is at once terminated by the conquest or subjection of the Suzerain Power by any third Power, for the obvious reason that it thereby ceases to be paramount.

Fifthly, the Inferior Power is not by reason of the suzerainty bound to defend its suzerain.

The right of either Power as an independent Sovereign State to defend and protect its own subjects is not impaired by a suzerain relationship; but the exercise of such right by the Inferior Power outside its territory must be with the consent of the suzerain, who, in clear cases by the law of nations of necessary defence, cannot withhold its consent without violating the conditions of the alliance, which, although unequal, imply the sovereignty of the Inferior Power, and the primary and inherent attribute of defence of its subjects.

Conclusion.—Peace is the reward of a loyal observance by both Sovereign Powers of the requirements of a suzerain relationship. Each must respect the sovereign rights of the other: the inferior State the conceded suzerainty of the superior Power, and the latter the reserved sovereignty of the former. All sovereign rights remain in the Inferior Power, but the free exercise of some is suspended by the treaty during the alliance or other relationship established by the treaty. This is the spirit of a conventional suzerainty. It differs from feudal suzerainty, which established the relation of lord and vassal.

A MODEL CRIMINAL CODE FOR THE COLONIES.

[*Contributed by* H. L. Stephen, Esq.]

There are two practical points in connection with the rapidly increasing codes of our Crown colonies which ought, I suggest, to be investigated under the auspices of the Society for the Study of Comparative Legislation.

The Crown colonies have for a long time, and for obvious reasons, been regarded as affording suitable ground for the exercise of the efforts of codifiers, and I believe I am correct in saying that if a colonial chief justice or attorney-general wishes to gain the favour of the Colonial Office, he offers to codify the laws he helps to administer. The criminal law is naturally the first branch of the law subjected to this process, and it is to the process by which the colonial criminal codes are turned out that I wish to call attention.

In 1877 Mr. R. S. Wright, as he then was, drafted a criminal code for the colony of Jamaica. This was settled by Sir James Stephen, but never became law. It has, however, been officially proclaimed to be the model on which all future colonial criminal codes should be framed. Since then various other colonies have enacted criminal codes, and others will probably soon do the same. As to all these codes I have two points: one I am prepared to maintain in proper controversial form; the other I suspect on *à priori* reasons is sound, but I should like fuller consideration before advising that it is good enough to fight on. The first is that the 1877 model is to a great extent obsolete. It will be observed that it was published just before Sir James Stephen entered on those labours which ended in the Criminal Code Commission Report of 1880, and I am not disparaging its author's work in saying that it would have been improved had it been done after instead of before that report. As it is, the model code of 1877 contains definitions such as those of "intention" and "cause," which I suspect Mr. Justice Wright would find it very difficult to apply, and which I am certain would only create confusion in colonial courts where any attention was paid to them. The treatment also of attempts and mistakes and some other of the difficult parts of the criminal law could be considerably amended by utilising the results of the

labours of the English commissioners and by drawing on the experience of judges who have administered the codes already in existence.

My second point is that proper use has not been made of the code of 1877, or any other model. Criminal codes have been passed in various colonies (I am writing without books, so I forbear from detail), of which those of St. Lucia, Gold Coast, and Grenada were drafted in the order named. I believe that the code of St. Lucia follows the 1877 model pretty closely, that of the Gold Coast follows St. Lucia, and that of Grenada follows the Gold Coast. I speak with uncertainty as to the last point; but if I am wrong I beg leave to substitute the draft code of Lagos for the enacted code of Grenada, and to add that in any event the Gold Coast code is a very good one to follow. In any case the model code is not followed, and as the draft codes are in every case compiled by local judicial officers, with the minimum of control from the Colonial Office, I suspect that a comparison of the various codes would bring considerable and increasing divergences to light. What I have to suggest as to this point is that such a comparison should be made; and that if, as I suspect will be the case, serious differences are found to exist, the Colonial Office should be incited to reopen the whole matter. Differences of detail in the code of each colony ought of course to be frequent; but on other grounds than mere theoretical symmetry, the more scientific part of every local code ought to be the same.

The two points I have referred to both require careful and detailed consideration, which could be better bestowed on them under the auspices of the Society for the Study of Comparative Legislation than in any other way of which I am aware.

THE HOMESTEAD ACTS.

[*Contributed by* EDWARD MANSON, ESQ.]

The Home.—Those who have read that masterpiece of fiction, *The Mill on the Floss*, will remember the anguish of poor Mrs. Tulliver when not only Dorlcote Mill, but all the precious "chaney" of her maiden pride was being sold up to pay the costs of hot-headed Mr. Tulliver's unfortunate litigation. To "have the bailiffs in," "to be sold up," was to the whole race of Tullivers and Gleggs and Pullets the deepest of disgraces, shattering every cherished traditional idea of respectability and honest family pride. This self-respecting independence, which has its source and centre in the home, is not peculiar to the simple folk who lived on the banks of the Floss; it is a sentiment deeply rooted in the national life of the whole Germanic race. Whether the family is, as Aristotle says, "the first community," or whether, as some anthropologists contend, the horde and not the family is historically the primitive type, is an interesting antiquarian speculation and a very "pretty quarrel" as it stands; but no conclusion of science on this point can alter the fact that in the case of the civilised community the family is the real nucleus or unit of the national life. "What creates a people," as Cardinal Manning said, "is domestic life: the loss of it degrades a people to a horde"; and the wisest legislators and statesmen have been those who have seen in the conservation and consecration of the home the true *salus reipublicæ*, the school of good citizens.

Domus sua Cuique Castellum.—Far back beyond the era of legal memory we find the doctrine of the old common law established, that the Englishman's house is his castle—"domus sua cuique est tutissimum refugium"—the place where he had the benefit of sanctuary, an oasis of peace in a desert of lawlessness; and the same sentiment formulated as law gave protection to those goods and chattels which were necessary to support the family life—to the beasts of the plough, the implements of a man's trade. Those who went forth from these shores to colonise the world took with them this faith in the inviolability of the domestic hearth, and, like the Greek colonist of old, rekindled the sacred fire in the new lands to which they went.

In the Homestead Acts recently passed in the Western States of America, and in our great self-governing colonies in the Provinces of Quebec and of Ontario, in Manitoba, in New South Wales, in South Australia, in New

Zealand, in Queensland, and in West Australia, we have, strikingly illustrated, the vitality of this sentiment investing the home and the continuity of the policy which protects it. Like all transplanted ideas, this of the home has taken its colour from its new environment, the conditions of life obtaining amongst vigorous young communities.

The Policy of Free Grants.—The primary need of every new country with large tracts of waste land is population—to attract cultivators, but they must be cultivators of the right sort—honest, industrious settlers, not ne'er-do-weels and vagrants, the cast-off social wreckage of other communities; and it is to securing persons of this sort that the policy of our self-governing colonies, following that of the Western States of North America, has long been directed. Grants of land have been and still are being offered to emigrants either free or at nominal prices or conditions. These conditions vary with different colonies and with the nature of the country. Sometimes the condition is to clear and cultivate, sometimes to plant with trees, sometimes to build a dwelling-house, sometimes to irrigate, sometimes to eradicate poisonous plants, sometimes to destroy rabbits and other vermin; but whatever the particular local conditions, there is, coupled with them, almost invariably a condition that the allottee shall reside on the land for the whole year, nine months, seven months, six months—always for a substantial period.

The Land Act, 1898, of West Australia (No. 37, Part VIII.), is an example of this type of conditional grant. It empowers the Governor to declare any Crown lands (not being within a gold-field) available for free farms called "homestead farms"; and any person, not already owning one hundred acres in the colony, who is the head of a family or a male of eighteen is to be entitled, subject to the approval of the Minister of Lands, to obtain a homestead farm of not more than one hundred and sixty acres. The applicant on payment of £1 receives an "occupation certificate," but the title remains in the Crown until issue of the Crown grant. Every selector is within six months to take possession of the land in his own person, reside upon it, and make it his usual home without any other habitual residence during at least six months in each year for the first five years of the term. Not only this, but the selector is bound within two years to erect upon his homestead farm a habitable house costing not less than £30, or to expend the same amount in clearing or planting within five years; to fence one-fourth and crop one-eighth, and within seven years to fence the whole, and clear and crop at least one-fourth. At the expiration of seven years from the date of the occupation certificate the selector, upon proof of conditions performed, is to be entitled to a Crown grant.

The Protection of the Settler.—Permanency of settlement is the policy which has inspired this and a great number of similar Acts, and a very wholesome policy it is. It benefits the community by giving it the best kind of citizen and cultivator—the householder; and it supplies the settler with the strongest

incentive to industry.[1] "Give a man," it has been said, "the secure possession of a bleak rock, and he will turn it into a garden. Give him a nine years' lease of a garden, and he will convert it into a desert." Such is the magic of property. But (and this is the vital point) to realise the benefit of this principle, the possession must be secure; the allottee must be assured that his labour will not have been spent in vain, that he will reap what he has sown, that he will not be ousted by a foreclosing mortgagee or crippled by an execution creditor. The aim of the Homestead Acts is to guarantee this security of tenure to the *bonâ-fide* settler; and to this end the Acts give him and his family (i) protection against creditors, and (ii) they create a statutory settlement in favour of the wife and children—in substance an estate tail.

To English ideas this immunity from the claims of creditors—albeit a graft from the parent stock of the old common law of England—is a novelty, and a rather startling one, so unaccustomed are we to allowing considerations of public policy to interfere with the strict rights of creditors. But with the new world it has been different. There the legislatures, impressed at once with the misery caused to the debtor by the rigorous enforcement of the law of debtor and creditor, and with the burden entailed on the State by rendering the debtor a useless member of society, and being more free because less fettered by the past to mould their institutions to meet the exigencies of modern social life, have allowed an extensive range of exemptions from execution, in derogation of the common law, with reference to working people.

Precarious Position of the Small Proprietor.—All history shows us that the yeoman and peasant proprietor has a hard struggle to maintain his position. The subdivision of property, the vicissitudes of agriculture, the competition of larger proprietors, the want of capital, the burden of debt, are all against him. In ancient Greece the Thetes (the small proprietors), who were the bulk of the population of Attica, were, when Solon came to their relief, weighed down with debts and dependence, and were driven in large numbers out of a state of freedom into slavery. In the early days of Rome, as every one knows, the situation created for the poor plebeian tiller of the soil brought the State to the verge of revolution: the small farmer was being constantly called to take the field against public enemies (just as the Boer is to-day); the farm had to be neglected. Then came borrowing from the wealthy patrician, and then the ruthless Roman law of debtor and creditor reduced the borrower to something worse than the condition

[1] In his *Essay on the True Greatness of Kingdoms and Estates* Lord Bacon notes and commends the policy of Henry VII. as profound and admirable "in making farms and houses of husbandry of a standard—that is, maintained with such a proportion of land unto them as may breed a subject to live in convenient plenty and no servile condition, and to keep the plough in the hands of the owners, and not mere hirelings." The yeomen farmers which this royal policy fostered were, as every one knows, the strength of our country in the olden time.

of a serf. A similar thing happened, as Cæsar tells us, among the ancient Gauls. Our own race of yeomen farmers is almost extinct. The same fate might easily have overtaken the settler or immigrant in the new world. Numbers of these emigrants came without resources; some of them had failed in the old settled parts, and had left nothing but debt behind. The attraction to these consisted in the certainty of a home, however moderate, for the family, and this the Homestead Acts were able to assure them. A few instances will illustrate the scheme of these Acts.

Province of Quebec.—Thus by No. 27 of the statutes of this province every settler upon public lands in the province who has received letters patent for such land is to hold such land, provided it does not exceed two hundred acres in extent, and if it does so, then two hundred acres thereof, together with the buildings, mills, etc., as a homestead. No such homestead is during the life of the original grantee, of his widow and of his, her, or their children and descendants in the direct line, to be liable to be seized for any debt whatsoever.

The proprietor of a homestead may alienate the same either by gratuitous or onerous title. If married, the formal consent of his consort is required; and if his consort is dead and the proprietor has minor children, the consent of a family council homologated by the Superior Court of the district in which the homestead is situated, or by a judge of that court.

Certain movables are also exempted, whether in possession of a *bonâ-fide* settler, or of his widow, or of his or their children in a direct line, so long as they are in possession of the homestead: for instance, beds and bedding; necessary and ordinary wearing-apparel of the settler himself and family; one stove and pipes, one set of cooking-utensils, one table, six chairs, six knives, six spoons, six forks, six plates, six teacups, six saucers, one sugar-basin, one milk-jug, one teapot; all spinning-wheels and weaving-looms in domestic use; one axe, one saw, one gun, six traps, fishing-nets, and ten volumes of books; all necessary fuel, meat, fish, flour, and vegetables sufficient for the family for three months; seed grain necessary to sow land; two horses, two draft oxen, fifteen other head of horned cattle, twenty-five sheep, ten pigs, all the poultry and the grain and other forage intended for the support or fattening of these animals and poultry.

Manitoba.—No. 53 of the Consolidated Statutes of this province protects from seizure and sale any farm (not exceeding one hundred and sixty acres) upon which a judgment debtor or his family actually resides, or which he cultivates together with the house, stables, barns, and fences on the farm. It also protects the actual residence or home of any person other than a farmer, provided the same does not exceed the value of fifteen hundred dollars. Beds and bedding and household furniture and effects not exceeding five hundred dollars in value are exempted from execution; necessary clothing for the family; twelve volumes of books, the books of a professional man; one axe, one saw, one gun, six traps; necessary food for

eleven months; six cows, three oxen or horses, two pigs, ten sheep, fifty fowls, and eleven months' food for the same; tools and agricultural instruments up to the value of five hundred dollars, and articles and furniture necessary to the performance of religious services; and any contract purporting to waive the right to these exemptions is to be null and void.

Ontario.—By No. 29 of the Revised Statutes for the province (1897) a person over eighteen may be located for a free grant of not more than two hundred acres on making an affidavit that he believes the land suited for settlement and cultivation, and not to be valuable chiefly for its mines, minerals, or pine timber, and that the location is desired for his own benefit and for the purpose of actual settlement and cultivation of the land. No patent is to issue for the land located for five years, nor until the locatee has cleared and brought under cultivation fifteen acres at least, and has built a house fit for habitation at least sixteen feet by twenty feet, and has actually and continuously resided upon the land for five years succeeding the date of the location. Failing performance of these conditions, the location is forfeited. A locatee has no power to alienate (otherwise than by devise) or mortgage or pledge, and after issue of the patent any alienation must be by the locatee and his wife jointly; on death of the locatee, all his interest vests in his widow during widowhood. No land so located is in any event to be liable to the satisfaction of any debt or liability incurred by the locatee, his widow, heirs, or devisees, before the issuing of the patent for the land. After the issuing of the patent, the land is to be exempt for twenty years after the date of the location from attachment, levy under execution, or sale for payment of debts; but the exemption does not extend to rates or taxes.

No. 77 of the same Revised Statutes exempts from seizure under any writ a variety of chattels comprising all the necessary household furniture and utensils—the bed and bedding of the family, their wearing-apparel; one stove, six chairs, six towels, one looking-glass, one hair-brush, one comb, twelve knives and forks, twelve teacups, one teapot; all spinning-wheels; thirty volumes of books; one axe, one saw, one gun; all necessary fuel, meat, flour, and vegetables to last thirty days; one cow, six sheep, twelve hens, tools, bees, etc.

British Columbia.—No. 93 of the Revised Statutes of the above (1897) proceeds on similar lines. The owner of a homestead desiring protection from forced seizure and sale is to register his homestead in the Land Registry Office of the district, accompanied by a statutory declaration, where the homestead is over two thousand five hundred dollars in value, that his assets are worth that amount, and, if the homestead is under two thousand five hundred dollars, that his assets are not less than the value of the homestead. These formalities complied with, a homestead is to be free from forced seizure or sale by any process for or on account of any debt or liability incurred after registration of the homestead; but the protection is only up to the limit of

two thousand five hundred dollars. The notice involved in registration, it may be remarked in passing, disposes of any grievance on the part of creditors. If a husband holding a homestead die intestate, leaving a widow and minor children, the homestead is to wholly pass to such widow, to be held by her during the minority of such children or while the widow remains unmarried, and the exempted property is not to be sold during such minority. If there are no children the homestead goes to the widow absolutely; if no widow, but only children, the homestead goes among the children equally on the youngest attaining twenty-one. The owner of a homestead, being a single man, may abandon alien mortgage or otherwise part with it; but if a married man, he cannot so deal with it without the consent of his wife formally given by way of acknowledgment. The goods and chattels of a debtor are by the same Act exempt from forced seizure or sale to the value of five hundred dollars, and the debtor is allowed to select them.

New South Wales.—Part III. of the Crown Lands Act, 1895, of this colony authorises the Governor to set apart any tract of Crown lands for disposal by way of homestead selection (no block is to be more than one thousand two hundred and eighty acres), and to offer them at a valuation, with any special conditions which may be desirable as to drainage, irrigation, clearing, cutting, preservation or planting of timber, etc. An applicant must not be under sixteen, or subject to any legal disability; and he is within three months after the confirmation of his application to commence to live upon the homestead selection, and is to continue to have his home and place of abode there until issue of the grant (which is not made for five years); he is within eighteen months after confirmation to erect upon the homestead selection, and maintain, a dwelling-house of not less than £20 in value, pay an annual rent of one and a quarter per cent. on the capital value of the block, and perform the special conditions. Thereupon, in due course, he obtains his grant.

The Governor is empowered to define the minimum period of living on the land in each year, but it is not to be less than seven months. The owner for the time being of a holding consisting of a homestead selection, whether granted or ungranted, may in any case where his name is established upon such holding obtain for such holding protection under the Act by registering it with the land-agent of the district. The effect of such registration is that the homestead is not to be sold under any writ of execution or vest in any official assignee or trustee on the owner's bankruptcy, or be "in any other way taken from the owner for the satisfaction of any debt or liability under process or constraint of law." But registration is not to have the protecting effect above if the owner ceases to live thereon, as his home, or transfers his holding.

New Zealand.—By the Family Homes' Protection Act, 1895, No. 20, of this colony, any owner of land, whether freehold or leasehold, on which he resides and has his home, may settle such land, not exceeding with all

improvements £1500 in value, as a "family home." But the land must be unencumbered, and the settler able to pay his debts without the aid of the land proposed to be settled. On an application to register, any creditor may enter a caveat. Failing a caveat, the registrar is to issue a family home certificate, and record on the Land Registry that the land is "settled as a family home under the Family Homes Protection Act, 1895." The effect of such registration is to settle the land for the personal use and occupation of the settler and his family, and distribution among them at his death as directed by his will, or when the children attain twenty-one; failing a will, one-third to wife or husband, the residue to children. No alienation is allowed by the settler or his family; and the estate and interest of the settler and his family is to continue "personal, absolute, undefeasible, and unaffected, notwithstanding any bankruptcy, assignment, judgment, order, charge, execution, dealing, matter or thing," which but for the Act would have affected it.

The Act does not relieve from burdens in respect of drainage or water supply, payment of rates and taxes, maintenance of boundary fences, etc. The registration is to be void if within twelve months the settler becomes bankrupt or dies insolvent. No duty is payable in respect of any settlement under the Act.

The Significance of Homestead Legislation.—The Bishop of London, in his address at the recent Church Congress, surveying the manifold activities of modern life, interprets for us their significance. "Steady and careful amelioration of the general conditions is," he says, "the object of our legislation and philanthropy. That is the avowed aim of the activity of the world around us when it is working at its best." The Homestead Acts are a good example of this effort for amelioration of social conditions directed to the protection and preservation of the home.[1] They recognise that nothing gives a man more courage to fight the battle of life than the certainty that, come what will, he will have a roof to shelter himself and his family and the decencies of life around him; a home, too, which will not fail when he himself dies, but will endure for the benefit of his wife and children till they have reached an age when they can be self-supporting. And with this comforting sense of security against Fortune comes the feeling of self-respect which is the pillar and ground of all the virtues.

[1] In England we have nothing analogous to the Homestead Acts; but Mr. Chamberlain's Small Houses' Acquisition Measure is a first step towards dealing with the pressing subject of working men's dwellings.

REVIEW OF THE LEGISLATION OF THE BRITISH EMPIRE IN 1898.

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INTRODUCTION TO THE
REVIEW OF THE LEGISLATION OF THE EMPIRE
FOR 1898.

By Sir Courtenay Ilbert, K.C.S.I.

Consolidation and Statute Law Revision.—Amid the copious torrent of special laws which flows with bewildering confusion from Colonial legislatures it is satisfactory to find that Colonial governments are alive to the importance of reducing their statute law to more reasonable compass and more intelligible form. In the course of the year 1898 some of the great self-governing colonies, notably New South Wales, passed several consolidating measures of great magnitude and importance. British Columbia, Nova Scotia, and Ontario were taking active steps for the revision and consolidation of their statutes, and the Revised Ordinances brought out by the Government of the North-West Territories in 1898 illustrate the contents and arrangement of these compilations. The comprehensive Criminal Code of Queensland is still in the stage of a Bill.

Constitution.—The annexation of Zululand to Natal involved consequential alterations in the constitution of the Legislative Council of that colony. Newfoundland passed an Act containing various provisions for regulating the internal economy of its Legislature.

Civil Service.—Newfoundland also passed several laws for reorganising the different departments of its public service. Natal regulated the conditions of admission to its Civil Service. Ceylon was working out a scheme for a pension fund for widows and orphans of public officers, and the Dominion of Canada established a retirement fund, formed by reserving 5 per cent. of each civil servant's income.

Army and National Defence.—The Parliament of the United Kingdom in 1898 increased the power of calling out the Reserve forces and of employing the Militia abroad. As the result of long discussions, Ceylon determined to appropriate yearly to the Imperial Government for the defence of the island a sum equivalent to $9\frac{1}{2}$ per cent. of the Colonial revenues.

Criminal Law.—The field of Criminal Law presented many interesting legislative experiments in 1898. Queensland was preparing a criminal code. India was dealing with seditious publications. Ceylon was prohibiting the use of knives. Hong-Kong was grappling with the bribery of public servants. South Australia was legislating against various forms of fraud, such as the presentation of valueless cheques and betting on "confidence games." New Guinea enriched our criminal terminology by passing a law against "pandery." Not only England, but the Cape and South Australia, were striking at that detestable animal the "bully," or "fancy man." Sierra Leone was protecting illiterate persons against fraud by the public letter-writer, a character well known in Europe when writing was a rarer accomplishment. Gambia on one side of the Atlantic and Jamaica on the other were concerned with sorcery, witchcraft, and the practice of "obeah." In procedure, the

Parliament of the United Kingdom closed a long controversy by allowing prisoners to give evidence. Sierra Leone, the Gold Coast, and Jamaica were devising various modifications of trial by jury and by assessors. Fiji tried a risky experiment in giving courts power to punish perjury as contempt of court. As closely connected with the criminal law may be mentioned the important Prisons Act, regulating the treatment and punishment of prisoners in English prisons.

Church.—By the Benefices Act of 1898 the Parliament at Westminster made a further attempt to deal with the offence of simony and the scandals arising from unfitness or negligence on the part of incumbents of livings.

Education.—The Imperial Parliament also established an elaborate scheme for retiring pensions for teachers in elementary schools by means of funds contributed partly by the teacher and partly by the State.

Poor.—An Act passed for Ireland in 1898 enabled Irish boards of guardians to make better provision for the relief of children outside workhouses by placing them out at nurse or boarding them out. In the same year Manitoba passed a Children's Protection Act, with provisions for the appointment of a superintendent of neglected children. But the most important experiment of the year in legislation relating to the poor was the Old Age Pensions Act of New Zealand, the operation of which will be watched with much interest in this country.

Public Health.—The English Vaccination Act was noticeable for the recognition of the principle of home vaccination, of the use of glycerinated calf-lymph, and of the conscientious objector, who also figures in a Tasmanian Act of the same year. Both India and Ceylon had to legislate about lepers.

Drink.—The Parliament at Westminster passed a modest and tentative measure for sending inebriates to inebriate homes instead of to prison. New Zealand also authorised its Government to establish inebriate institutions in which inebriates might be detained, either on their own application or under the order of a judge or magistrate. Under an Act of the Cape Parliament conditions short of total prohibition may be attached to a license for the sale of intoxicating liquors, and these conditions may prohibit the sale of drink to a native at a railway station.

Labour.—Victoria has incorporated in the Dangerous Building Removal Act, passed for Melbourne, provisions fixing the workman's wages at 1*s.* 3*d.* an hour, and entitling him to compensation for death or injury caused by his employment. Victoria and South Australia have prohibited the attachment of workmen's wages. West Australia has given workmen employed under a contractor a first charge for their wages on money due to the contractor, and has enabled workmen whose wages are in arrear to attach money in the hands of the employer. Manitoba has given the workman a lien for his wages on the work upon which he is employed. New Zealand has been amending its Industrial Arbitration Act. British Columbia has been prohibiting truck, and invalidating contracts for the performance of labour or service in the province by intending immigrants. Conversely, Trinidad has been imposing penalties on persons inducing or hiring others to leave the colony for employment as labourers elsewhere. In connection

with the subject of labour may be mentioned the Acts passed by New Brunswick and Manitoba for restricting business and amusements on Sundays. New Guinea has been regulating the conditions of native labour.

Immigration.—This subject is still occupying the attention of Colonial legislatures. New South Wales, which had previously prohibited the immigration of Chinese, has now been legislating on the Natal lines, and shutting out those who cannot write and sign an application in a prescribed form in some European language. New Guinea specifically restricts the immigration of Chinese. Fiji has fixed the terms on which immigrants from India may be landed and employed. Trinidad and Tobago have been reducing the amount of their contribution to the expenses of the return passage of coolies brought from India. Bermuda has been trying to prevent the immigration of persons likely to become a public charge. British Guiana and the Leeward Islands have been amending their previous legislation about pauper immigrants.

Land and Agriculture.—The Central Provinces Tenancy Act and the Burma Act supply interesting illustrations of the questions relating to the tenure of land which arise in British India. The Land Acts of Victoria and South Australia show the conditions on which land may be acquired and held for agricultural and pastoral purposes in Australia. Tasmania has been making provision for lending money on easy terms to cultivators of the land; and New Brunswick has been trying to afford greater encouragement to young men to settle on wilderness lands, the property of the Crown. Fiji has been endeavouring to combine recognition of the native system of land tenure by family communities, with permission to lease native lands for limited terms.

Mercantile Law.—Our English Companies Act of 1898 dealt with the difficult rule under which payment for shares is required to be made in cash. West Australia has been requiring local registration of foreign companies carrying on business in the colony. Quebec has been amending its law for the registration of partnerships.

Family Law.—An English Act of 1898 enabled Nonconformist marriages to be solemnised in the presence of a "duly authorised person" instead of a registrar. The Straits Settlements and Victoria have been consolidating their marriage laws. New Zealand has enlarged the ground for divorce. "*Nolumus leges Angliæ mutare*," said the barons of England when they were asked to legitimate children born before marriage. But South Australia is less stubborn, and has provided means for the legitimation of children born out of wedlock.

Copyright.—Ceylon has followed the lead of other colonies by granting limited protection against the republication of telegraphic messages. Natal has been declaring the law affecting play rights.

Usury.—Jamaica has been repealing its old usury laws, but at the same time has been giving its courts certain discretionary powers in the case of loans under £20 at 25 per cent. interest.

Miscellaneous.—South Australia has been giving power to make bylaws for the regulation of noisy trades; and Tasmania has made a praiseworthy attempt to prevent the defacement of scenery by the display of printed or pictorial matter, advertisements, or other abominations.

I. UNITED KINGDOM.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

Acts passed—Public General, 62; Local, 262.

Finance.—The Greek Loan Act, 1898, No. 4, enabled the Government of the United Kingdom to join with the governments of France and Russia in guaranteeing a loan to be raised by the Government of Greece.

The Public Buildings Expenses Act, 1898, No. 5, enabled the Treasury to borrow money for defraying the expenses of the new public offices at Whitehall, Westminster, and elsewhere.

The Finance Act, 1898, No. 10—*i.e.* the Budget Act of the year—reduced the tobacco duties, carried the partial relief from income tax up to incomes of £700, and exempted from land tax all owners exempted from income tax on the ground of their income not exceeding £160.

Civil Procedure.—The Special Juries Act, 1898, No. 6, removed the limit of forty-eight on the number of persons who may be summoned to the assizes as special jurors.

The Vexatious Actions (Scotland) Act, 1898, No. 35, practically extends to Scotland the provisions of the Vexatious Actions Act, 1896.

Criminal Procedure.—The Bail Act, 1898, No. 7, facilitates the grant of bail by enabling it to be granted without the requirement to find sureties.

The Criminal Evidence Act is noted under the head of Evidence.

Sheriffs.—The Act to amend the law in regard to the tenure of office of sheriffs in Scotland (No. 8) enables the Secretary for Scotland to order the removal of a sheriff on a report declaring that he is, by reason of inability or misbehaviour, unfit for his office; but the order must lie before Parliament for four consecutive weeks, and during that time may be annulled by resolution of either House.

Army.—Under the Reserve Forces Act, 1882, 45 & 46 Vict., No. 48, the Army Reserve cannot be called out on permanent service except by proclamation made in case of imminent national danger or great emergency. If Parliament is then sitting there must be a previous communication to Parliament, and if it is not it must be summoned to meet within ten days. The Reserve Forces and Militia Act, 1898, No. 9, enables a man of the first class army reserve, if he so agrees in writing, to be called out on permanent service during his first twelve months of service in the reserve without

compliance with the requirements of the Act of 1882. But this power is subject to several restrictions. The number of the men liable to be called out under it is not to exceed five thousand at any one time. The power is not to be exercised except when the men are required for service outside the United Kingdom when warlike operations are in preparation or in progress. The men called out are not to be liable to serve for more than twelve months. An agreement to incur the liability may be revoked by three months' notice in writing. And any exercise of the power is to be reported to Parliament as soon as may be.

Under the Militia Act, 1882, 45 & 46 Vict., No. 49, no part of the militia is to be carried or ordered to go out of the United Kingdom, except that if any part of the militia make a voluntary offer to serve in the Channel Islands, or at Malta, or Gibraltar, the offer may be accepted. But even in that case a person may not be compelled to make an offer, or be engaged so to serve, except by his own consent. S. 2 of the Reserve Forces and Militia Act, 1898, extends this power of making offers of voluntary service to any place outside the United Kingdom, and authorises the employment of any member of the militia volunteering to serve for a period not exceeding one year, whether an order embodying the militia is in force or not at the time. But the Act retains in force the provision which requires the consent of each individual to service outside the United Kingdom.

Church.—The Act of Henry VIII., which first authorised the appointment of suffragan bishops, is so framed as to prevent a person who is already a bishop from being appointed a suffragan bishop under it. The Suffragan Bishops Act, 1898, No. 11, amends the Act of Henry VIII. in such a way as to enable a retired Colonial bishop to become a suffragan bishop in England.

The Benefices Act, 1898, No. 48, gives effect to some of the recommendations made by the Report of the Royal Commission on Church Patronage in 1879, and to some of the proposals embodied in Bills which have been for many years before Parliament. S. 1, which is directed against simony, requires, subject to certain exceptions, every transfer of a right of patronage to a benefice to be registered in the diocesan registry; prohibits, in effect though not in express terms, the sale of next presentations; and invalidates a sale of a right of patronage made within twelve months after the last institution or admission to the benefice. It also prohibits, under penalties, the sale by public auction of any right of patronage, except in the case of an advowson sold in conjunction with a manor, or with an estate in land of not less than a hundred acres situate in the parish in which the benefice is situate, or in an adjoining parish, belonging to the same manor as the advowson. It further invalidates certain agreements of a simoniacal nature, substitutes a more stringent and specific declaration for the declaration against simony required by the Clerical Subscription Act, 1865, 28 & 29 Vict., No. 122, and makes simoniacal transactions offences capable of being dealt with under the Clergy Discipline Act, 1892.

Under the previous law a bishop could refuse to institute a presentee for want of "idoneity" or fitness. But there was always some doubt as to what want of fitness would include; and as refusal to institute might involve expensive proceedings at law, it was a power which the bishop naturally was unwilling to exercise. S. 2, whilst not derogating from any existing power, enables a bishop to refuse institution—

(*a*) if at the date of the vacancy not more than one year has elapsed since the transfer of the right of patronage, unless it is proved that the transfer was not effected in view of the probability of a vacancy within the year; and

(*b*) on the ground that at the date of presentation not more than three years had elapsed since the presentee was ordained deacon, or that the presentee is unfit for the discharge of the duties of the benefice by reason of physical or mental infirmity or incapacity, pecuniary embarrassment of a serious character, grave misconduct or neglect of duty in an ecclesiastical office, evil life, having by his conduct caused grave scandal concerning his moral character since his ordination, or having with reference to presentation been knowingly party or privy to any transaction or agreement which is invalid under the Act—*i.e.* as being simoniacal.

Then comes a provision which is apparently intended to give an opportunity to the parishioners for expressing their opinion. A bishop is not to institute or collate until the expiration of one month after the notice that he proposes to do so has been served on the churchwardens of the parish, who are to publish the notice in the manner prescribed by rules. An appeal against the refusal of a bishop to institute is given to a court consisting of the archbishop of the province and a judge of the Supreme Court nominated by the Lord Chancellor. The judge is to decide all questions of law, and his finding on any question of fact as to an alleged reason of unfitness or disqualification is to be binding on the archbishop. In cases where this appeal lies against any refusal, no proceeding in the nature of *quare impedit* or *duplex querela* is to be taken in respect of the refusal. But this particular form of appeal does not lie where the refusal is based on the ground of doctrine or ritual or want of title in the patron.

Other provisions of the Act (ss. 8, 9) strengthen the lay element in the commissions of enquiry which can be held under the Pluralities Acts, and enable the bishop to inhibit an incumbent if he is reported by such a commission to be negligent in the performance of his duties, and to appoint a curate to perform his duties. But any such inhibition is subject to appeal to the court which hears appeals against refusals to institute.

Under s. 10 a benefice is to become void in certain cases of sequestration against the incumbent for non-payment of his debts.

S. 12 converts into presentative benefices all benefices which at the

passing of the Act were donative—*i.e.* in which the cure of souls could be given to an incumbent without the intervention of the bishop. There were only about a hundred benefices of this class, but it was found that their existence facilitated simoniacal transactions.

The Act also widens the powers of the Universities of Oxford and Cambridge in respect of presentation to benefices.

Merchant Shipping.—The Merchant Shipping (Liability of Shipowners) Act, 1898, No. 14, extends the statutory limitation of a shipowner's liability for damage caused by his ship to a period of not more than three months between launching and registration. Under the previous law the limitation was confined to the period after registration.

The Mercantile Marine Fund, as constituted by the Merchant Shipping Act, 1894, and previous Acts, was fed from various sources, of which by far the most important were light dues, and was applied to various purposes mostly connected with shipping. The shipping interests complained that the result of this arrangement was to charge the light dues with expenses with which they were not properly chargeable, and consequently to raise their amount. The Mercantile Marine Fund Act, 1898, No. 44, abolishes the Mercantile Marine Fund; constitutes a new general lighthouse fund to which all light dues are to be carried, and which is to be applicable to lighthouse purposes only; charges on the votes all other expenses previously defrayed out of the Mercantile Marine Fund; and carries to the Exchequer the receipts, other than light dues, previously carried to that fund. It also makes some financial adjustments with respect to lighthouses previously paid for out of votes. In order to recoup the Exchequer to some extent for the additional burden thrown on the votes by this arrangement, the Act enables fees to be charged in respect of the registration, transfer, and mortgage of British ships, and increases the power of recovering expenses incurred on account of distressed seamen. The Act also alters the principle on which light dues are levied by charging them with respect to the voyage and not with respect to the lights which a ship passes or from which it is supposed to derive benefit. A schedule fixes the scale of dues for each voyage with respect to different classes of ships, but tugs and pleasure yachts are to make annual payments instead of payments for the voyage. There are exemptions for fishing boats and certain other classes of vessels.

S. 6 of the Act is intended to encourage the Royal Naval Reserve by authorising allowances to be made to shipowners in respect to British-born sailors employed by them and enrolled in the reserve.

Solicitors.—The Solicitors (Ireland) Act, 1898, No. 17, re-enacts with amendments the provisions of the Attorneys and Solicitors (Ireland) Act, 1866, 29 & 30 Vict., No. 84.

Poor.—The Poor Law Unions Association (Expenses) Act, 1898, No. 19, enables the guardians of any poor law union to make contributions out

of their common fund to the Association of Poor Law Unions in England and Wales, thus extending the provisions of the Poor Law Conferences Act, 1883, 46 Vict., No. 11, and following the provisions which had been subsequently enacted with respect to county councils, district councils, and school boards.

The Poor Law (Scotland) Act, 1898, No. 21, reduces for Scotland the period of residence required for settlement from five years to three years, enables the Local Government Board for Scotland to determine disputed cases of settlement, and provides for the cases of removal of paupers to England or Ireland.

The Pauper Children (Ireland) Act, 1898, No. 30, enables boards of guardians in Ireland to provide for the relief of children outside workhouses by placing them out at nurse or boarding them out. It also enables boards of guardians to send workhouse children to national and certified schools, and prohibits the employment of pauper children under twelve years of age.

The temporary Acts under which poor law guardians in Ireland were, during the autumn of 1898, empowered to supply seed, spraying machines and materials, and to employ instructors for the use of machines and materials supplied (No. 50), and under which guardians were empowered to grant outdoor relief during the same autumn (c. 51), also fall within the same category.

Statute Law Revision.—The Statute Law Revision Act, 1898, No. 22, continues the clearance of the Statute Book and clears off a good many temporary Acts and other spent and superseded provisions.

Companies.—S. 25 of the Companies Act, 1867, 30 & 31 Vict, No. 131, which enacts that every share in a company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint Stock Companies at or before the issue of the share, has, as is well known, given rise to much litigation and many difficulties in practice. The Companies Act, 1898, No. 26, enables the court to grant relief in proper cases for non-compliance with these provisions by making an order for the filing with the registrar of a sufficient contract in writing, and directing that on the contract being filed within the proper time it shall have effect as if it has been filed before the issue of the shares to which it relates.

Highways.—The Locomotives Act, 1898, No. 29, regulates the use on highways of heavy locomotives, as distinguished from the light locomotives or motor cars which were regulated by the Locomotive on Highways Act, 1896, 59 & 60 Vict., No. 36. It extends the powers of county and borough councils to regulate the weight carried in wagons drawn or propelled by locomotives, and enables those councils to make bylaws prohibiting or restricting or regulating the use of locomotives on particular highways and bridges. All locomotives must be licensed by the county council, except

agricultural locomotives and steam-rollers, which need only be registered. If a licensed locomotive is used in a county in which it is not licensed, a fee of *2s. 6d.* a day must be paid to the council of the county during use. The Act requires the weight unloaded of each wagon drawn by a locomotive to be conspicuously and legibly affixed thereon, and limits the number of wagons to be attached to a locomotive. It regulates the persons to accompany and the lights to be carried by locomotives on highways. Expenses in relation to the damages caused by extraordinary traffic are to be recovered either in the county court or in the High Court, instead of before justices.

Evidence.—The Criminal Evidence Act, 1898, No. 36, makes a change in the law which had been the subject of legislative proposals in Parliament during almost every year since 1884, and gives a general application to provisions to the same effect which had been introduced into numerous Acts relating to special classes of offences. It enacts that every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person. But this enactment is qualified by several provisos. The person charged must not be called as a witness except on his own application. The failure of the person charged, or of his or her wife or husband, to give evidence is not to be made the subject of comment by the prosecution. The wife or husband is not, subject to certain exceptions, to be called except on the application of the person charged. Husband and wife are not to be compelled to disclose marital communications. The person charged, if called as a witness, may be asked a question in cross-examination, notwithstanding that it may tend to criminate him in respect of the offence with which he is charged, but is not to be asked, and if asked is not to be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that with which he is then charged, or is a bad character, except in three cases:

(i) where the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged;

(ii) where he has personally or by his advocate asked questions of the witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or where the nature or conduct of the offence is such as to involve imputation on the character of the prosecutor or the witnesses for the prosecution; and

(iii) where he has given evidence against any other person charged with the same offence.

A person charged is, in the absence of a special order to the contrary,

to give his evidence from the witness-box and not from the dock. The right of the prisoner under certain enactments to make an unsworn statement is preserved. There are provisions as to the time at which the person charged is to be called as a witness, and as to the right of reply. There are also provisions for calling the husband or wife in certain cases without the consent of the person charged. The Act is not to apply to proceedings in courts-martial under the Naval Discipline Act or the Army Act unless applied to them by general orders or rules. Rules have since been made applying the provisions of the Act to proceedings in courts-martial under the Army Act. The Act extends to England and Scotland, but not to Ireland.

Local Government.—The Local Government (Ireland) Act, 1898, No. 37, is an extremely elaborate enactment, which abolishes the system of government by grand jury in Ireland, establishes elective county councils and district councils (but not parish councils) in Ireland, and applies to them, with the necessary modifications, the provisions of the English Local Government Acts of 1888 and 1894.

Crime.—The Vagrancy Act, 1898, No. 39, punishes *souteneurs* and persons trading in prostitution, by making them liable to be dealt with as rogues and vagabonds within the meaning of the Vagrancy Act, 1824, 5 Geo. 4, No. 83.

Prisons.—The Prison Act, 1898, No. 41, amalgamates the Prison Commissioners and the Directors of Convict Prisons. When English prisons were under the control of local authorities, uniformity of treatment of prisoners was to some extent secured by the rules scheduled to the Prison Act, 1865, 28 & 29 Vict., No. 126. Since the management of prisons has been centralised by the operation of the Prison Act, 1877, these rules have been found to impede reform by unduly stereotyping practice. S. 2 of the Act enables the Secretary of State to make prison rules for the government both of local prisons and of convict prisons, and these rules, when made, are to take the place of the regulations scheduled to the Prison Act, 1865. A draft of any rules proposed to be made under this provision must be laid before Parliament.

The Act also enables Boards of Visitors, like the vestry committees of local prisons, to be appointed for convict prisons, and directs that the mode in which sentences of penal servitude or imprisonment with or without hard labour are to be carried out in prisons may be regulated by prison rules, and that in making these rules regard is to be had to the sex, age, health, industry, and conduct of the prisoners.

S. 5 imposes serious restrictions on the power to inflict corporal punishment for prison offences. Prison rules are not to authorise the infliction of corporal punishment:

(*a*) except in the case of a prisoner under sentence of penal servitude, or convicted of felony, or sentenced to hard labour; nor

(*b*) except for mutiny or incitement to mutiny or gross personal violence to an officer or servant of the prison; nor

(*c*) except by order of the Board of Visitors or Visiting Committee of the prison after enquiry on oath held by them at a meeting specially summoned for the purpose, and consisting of not less than three persons, of whom two must be justices; but a metropolitan police or stipendiary magistrate may be substituted by the Secretary of State for the Board or Committee.

The order of the Board or Committee is not to be carried into effect until it has been confirmed by the Secretary of State, who must also be supplied with a copy of the case, the evidence, and a report of the sentence, and of the grounds on which it was passed. These provisions practically abolish corporal punishment in prisons except in very grave cases.

Under the Prison Act, 1825, misdemeanants not sentenced to hard labour were to be divided into two divisions. Under s. 6 of the Act of 1898 prisoners not sentenced to penal servitude or hard labour are to be divided into three divisions, so as to admit of further graduation. Persons imprisoned for default in payment of a debt are to be placed in a separate division and treated under special prison rules. They are not to be placed in association with criminal prisoners, nor to be compelled to wear prison dress, unless their own clothing is unfit for use.

Provision is to be made by prison rules for enabling a prisoner to earn by special industry or good conduct a remission of a portion of his imprisonment (s. 8).

A person imprisoned for non-payment of a fine may obtain release by paying a part of his fine bearing proportion to the rest of his term of sentence (s. 9).

The powers of enabling a person to be produced for the purpose of evidence or otherwise in the interests of justice are extended (s. 11).

Trusts.—The Trusts (Scotland) Act, 1898, No. 42, enables trustees in Scotland to invest in the securities of local authorities.

Customs.—The Revenue Act, 1898, No. 46, which makes miscellaneous amendments in the revenue law, includes among the articles of which the importation is prohibited, fictitious stamps and advertisements of foreign lotteries.

Public Health.—The Vaccination Act, 1898, No. 49, was based to some extent on the recommendations of a Royal Commission which was appointed in 1889, and finally reported in 1896. It extends the period for compulsory vaccination to six months from birth instead of three months, thus following the Scotch law; abolishes the requirement to take a child to a station for vaccination by a public vaccinator; and requires public vaccinators to attend children at their own homes, as they do in Scotland, and offer to vaccinate with glycerinated calf-lymph, or such other lymph as may be issued by the Local Government Board, instead of by means of arm-to-arm vaccination.

S. 2 of the Act, which was introduced on the "report" stage, and has been the subject of much comment, recognises the conscientious objector

by enacting that "no parent or other person shall be liable to any penalty under s. 29 or s. 31 of the Vaccination Act of 1867, if within four months from the birth of the child he satisfies two justices or a stipendiary or metropolitan police magistrate, in petty sessions, that he conscientiously believes that vaccination would be prejudicial to the health of the child, and within seven days thereafter delivers to the vaccination officer for the district a certificate by such justices or magistrate of such conscientious objection."

The Act also contains provisions against repeated penalties, and requires persons committed to prison on account of non-compliance with any order or non-payment of fines or costs under the Vaccination Acts to be treated in the same way as first-class misdemeanants.

Public Libraries.—The Libraries Offences Act, 1898, No. 53, imposes specific penalties upon any person who in any public library or reading-room, to the annoyance or disturbance of any person using the same, behaves in a disorderly manner, uses violent, abusive, or obscene language, bets or gambles, or after proper warning persists in remaining beyond the hours fixed for closing, These offences had previously been dealt with only by bylaws, which had been found insufficient.

Universities.—The Universities and College Estates Act, 1898, No. 55, enlarges the powers of sale and leasing exerciseable by universities and colleges with respect to their lands, the range of purposes to which capital money derived from the sale of land may be applied, and the class of purposes for which loans may be raised. It places universities and colleges in these respects in a somewhat similar position to a tenant for life under the Settled Estates Acts.

The University of London Act, 1898, No. 62, appoints a body of statutory commissioners with power to frame statutes and regulations for the purpose of giving effect, subject to the modifications indicated in the schedule to the Act, to the recommendations made by the commissioners appointed to consider the draft charter of the proposed Gresham University in London. The main object of the Act is to provide for the London University being organised as a teaching as well as an examining university.

Education.—The Elementary School Teachers (Superannuation) Act, 1898, No. 57, establishes a scheme for retiring pensions for certificated teachers in elementary schools. Each teacher is, during his term of service, to contribute to the defrayed annuity fund constituted under the Act at the rate, if a man, of £3, and if a woman, of £2, a year. The Treasury may increase this rate. On attaining sixty-five, the teacher becomes entitled to a life annuity at a rate fixed by tables under the Act. If he has duly contributed to the fund and complied with certain other requirements of the Act, the Treasury may grant to him out of money provided by Parliament, by way of addition to his deferred annuity, an annual superannuation allowance calculated at the rate of ten shillings for each complete year of recorded

service. Provision is also made for the grant of disablement allowances to incapacitated teachers.

Marriage.—Under the law as it stood before 1898, a marriage in England was not valid unless solemnised in the presence either of a clergyman of the Established Church or of a marriage registrar, the only exception allowed being in the case of Jews and Quakers. The requirement of the attendance of a registrar at marriages solemnised in Nonconformist places of worship was a grievance to Nonconformists, and the object of the Marriage Act, 1898, No. 58, was to remove this grievance. It enables marriages to be lawfully solemnised in buildings registered for the purpose without the presence of a registrar, but in the presence of a "duly authorised person," who is responsible for seeing that the proper declarations are made, and that the entries required for registration purposes are duly made and signed. The authorised person must be certified as having been duly authorised for the purpose by the trustees or other governing body of the registered building; and this expression is declared by the Act to include, in the case of Roman Catholic registered buildings, the bishop or vicar-general of the diocese.

Post Office.—The Post Office Guarantee (No. 2) Act, 1898, No. 59, enables borough and urban district councils to guarantee postal and telegraphic facilities.

Inebriates.—Under s. 1 of the Inebriates Act, 1898, No. 60, where a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, if the court is satisfied from the evidence that the offence was committed under the influence of drink, or that drunkenness was a contributing cause of the offence, and the offender admits that he is, or is found by the jury to be, an habitual drunkard, the court may, in addition to or in substitution for any other sentence, order that he may be detained for not more than three years in an inebriate reformatory.

Under s. 2 of the same Act any person who commits any of certain offences specified in the schedule, being offences in which drunkenness is an element, and who within the twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any of the offences so specified, and who is an habitual drunkard, is to be liable on conviction or indictment, or on summary conviction if he consents to be dealt with summarily, to be detained for a term not exceeding three years in an inebriate reformatory.

Power is given for the Secretary of State to establish inebriate reformatories and to certify inebriate reformatories established by a county or borough council or by any other persons, and to make regulations for their management. County or borough councils are expressly empowered to contribute towards the expenses of inebriate reformatories.

The Act makes some miscellaneous amendments of the Habitual Drunkards Act, 1879, and the Inebriates Act, 1888, and among other things transfers to county and borough councils the power of licensing retreats for inebriates.

ISLE OF MAN.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

Acts passed—7.

Merchandise Marks.—The Merchandise Marks Acts, 1898, proceeds on the lines of the English Merchandise Marks Act, 1887, 50 & 51 Vict., No. 28, and contains an additional section (17) imposing penalties on any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of her Majesty or any of the Royal family or any Government department.

Education.—The Education Act, 1898, repeals the 17*s.* 6*d.* limit on the grant which may be made in respect of elementary day-schools in the island; exempts elementary schools from rates; and lays down rules for the election of school committees.

Intoxicating Liquors.—The Licensing Act, 1898, imposes a penalty for the sale of liquor to children under fourteen years of age.

The other cases are of merely local interest.

II. BRITISH INDIA.

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

Acts passed—13.

Currency.—The object of the Indian Paper Currency Act, 1898, No. 2, was to enable the Government under certain circumstances to alleviate the stringency in the money market by allowing the Secretary of State for India to draw bills for the accommodation of trade against the currency reserve as well as against the Indian Treasury. The Act was originally enacted for six months only, but was extended by Act 8 of 1898 to December 15th, 1900.

Lepers.—The Lepers Act, 1898, No. 3, enables local governments in India to prevent lepers who are suffering from any contagious form of disease from annoying the public by begging within notified localities, and to prohibit lepers from following, within the areas so notified, certain specified trades or callings, or doing certain acts which would bring them into close contact with the public, such as riding in public conveyances, or bathing in public wells or tanks. If a pauper leper is found begging within a notified area, he may be sent by a magistrate to a leper asylum, or handed over to the charge of a responsible friend or relative. Local governments are empowered to establish leper asylums and appoint inspectors of lepers.

Criminal Law.—The Indian Penal Code Amendment Act, 1898, No. 4,

declares that the provisions of the Indian Penal Code extend to any offence committed by—

(1) any native Indian subject of the Queen in any place without or beyond British India;

(2) any other British subject within the territories of any native prince or chief in India; and

(3) any servant of the Queen, whether a British subject or not, within the territories of any native prince or chief in India.

These provisions appear to exhaust the powers conferred by Parliament on the Indian Legislature for dealing with extra-territorial offences.

The Act also enacts that a person who, in British India, abets the commission without or beyond British India of any act which would constitute an offence if committed in British India is to be treated as abetting an offence within the meaning of the penal code.

S. 4 of the Act deals with the subject of sedition, and gave rise to much discussion. It substitutes for s. 124 (*a*) of the Indian Penal Code (which had been added to the code by Sir James Stephen) a new sub-section, which declares that "whoever by words either spoken or written, or by signs or by visible representation or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards her Majesty or the government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment, which may extend to three years, to which fine may be added, or with fine." The expression "disaffection" is explained as including disloyalty and all feelings of enmity; and there are two further explanations which define what comments do and do not constitute an offence within the meaning of the section.

S. 5 of the Act makes any person who by words either spoken or written, or by signs, or by visible representations or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of her Majesty's subjects, liable to punishment by fine or imprisonment. There is an explanation that it does not amount to an offence within the meaning of the section to point out, without malicious intention, and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of her Majesty's subjects.

S. 6 repeals s. 505 of the Indian Penal Code, and substitutes a section enacting that "whoever makes, publishes, or circulates any statement, rumour, or report—

"(*a*) with intent to cause, or which is likely to cause, any officer, soldier, or sailor in the army or navy of her Majesty, or in the Royal Indian Marine, or in the Imperial Service troops, to mutiny or otherwise disregard or fail in his duty as such; or

"(*b*) with intent to cause, or which is likely to cause, fear or alarm

to the public or to any section of the public, whereby any person may be induced to commit an offence against the State or against public tranquillity; or

"(*c*) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community";—may be punished with two years—or with fine or with both.

Where there is no such intent, and where a person making, publishing, or circulating a statement, rumour, or report has reasonable grounds for believing it to be true, there is no offence.

Criminal Procedure.—The Code of Criminal Procedure, 1898, No. 5, is an Act of 565 sections and 5 schedules, which consolidates with amendments the Code of Criminal Procedure of 1882, with the subsequent amending Acts. It represents the results of a revision which has occupied much time and labour. There are some new provisions as to first offences and habitual offenders, but most of the amendments relate to matters of minor detail. One, however, of the new provisions is closely connected with the legislation against sedition in the amendments of the Penal Code. It enables magistrates to require security from persons who disseminate seditious matter, matter promoting enmity between classes, or matter concerning a judge which amounts to criminal intimidation or defamation. This section is limited by a provision that no proceedings are to be taken under it against the editor, proprietor, printer, or publisher of any publication registered under or printed or published in conformity with the rules laid down in the Press Registration (Book) Act, 1867, except by the authority of the Governor-General in Council or local government, or some officer empowered by the Governor-General in Council in that behalf.

Post Office.—The Indian Post Office Act, 1898, No. 6, besides superseding the existing Post Office Acts, embodies, in statutory form, the contents of a large number of orders and regulations as to matters relating to the Post Office in India.

Petroleum.—The Petroleum Act, 1898, No. 7, alters the definition of petroleum, and gives power to the Governor-General in Council to alter the tests and flashing-point.

Livestock.—The Livestock Importation Act, 1898, No. 9, gives power to the Governor-General in Council in very general terms to regulate, restrict, or prohibit the importation of any livestock liable to be infected by infectious or contagious disorders, and of any fodder, clothing, etc., that may have been in contact with an animal so infected. The main object of the Act was to guard against the importation of horses infected with the tick disease, which at the time when the Act was under discussion was causing great ravage among cattle in Australia.

Landlord and Tenant.—The Central Provinces Tenancy Act, 1898, No. 11, repeals and re-enacts with amendments the Tenancy Act which

had been passed in 1883. Many of its provisions are of a very technical character, but some of them illustrate the difficulties incidental to any attempt to strengthen tenant right by legislation. When the tenant right is so strengthened, it is apt to become an eligible investment, not merely for agriculturists, but for others. The object of one of the new sections in the Act is to discourage the purchase of tenancies by non-agriculturists, and to do so by strengthening the position of the purchaser's sub-tenants, and thus limiting the profits which he could make by sub-letting.

Revenue.—The Central Provinces Land Revenue Act, 1898, No. 12, makes various amendments in the Land Revenue Act of 1881, especially with reference to sir-land—that is to say, the domain or permanent home farm-land of a proprietor.

Burma.—The Burma Laws Act, 1898, No. 13, makes a comprehensive list of the various enactments which have from time to time been declared to be in force in Upper Burma, defines the power which may be exercised by the local government of Burma in the border states known as the Shan States, and makes a number of detailed corrections in the Acts which constitute the Burma Code. In the Shan States the local government may by order, amongst other things, appoint officers to undertake or take part in the administration of civil and criminal justice, and the collection of revenue; modify the customary law in so far as it does not appear to be in accordance with justice, equity, and good conscience, or authorises punishments or permits practices which are not in conformity with the spirit of the law in force in the rest of British India; and modify the system of taxation and the assessment and collection of revenue.

2. MADRAS.

Acts passed—5.

Wills.—The Malabar Wills Act, 1898, No. 5, declares the testamentary powers of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance. This law, as explained in the "Review of Legislation" for 1896 (*Journal*, vol. ii., p. 146), is based on the system of polyandrous marriages prevalent among the Nairs.

The other Madras Acts are of no general interest.

3. BOMBAY.

Acts passed—4.

Police.—Act No. 3 amends the Bombay District Police Act, 1890, by giving further powers to determine and recover the amount of compensation for injury caused by an unlawful assembly.

Town Government.—The City of Bombay Improvement Act, 1898,

No. 4, is a comprehensive improvement Act constituting a Board of Improvement Trustees, regulating their procedure, and defining their duties and powers. It is a result of the plague, and supplies machinery for rebuilding the unsanitary parts of Bombay.

4. BENGAL.

Acts passed—3.

Police.—The Calcutta Police Act, 1898, No. 1, extends to Calcutta certain provisions of the General Police Act, 1861, including the power to quarter additional police in a disturbed or dangerous area at the cost of the inhabitants, and the provisions as to the award of compensation to sufferers from the misconduct of the inhabitants or persons interested in land.

Landlord and Tenant.—The Bengal Tenancy Amendment Act, 1898, No. 3, amends on various points the Bengal Tenancy Act, 1885, and amongst other things imports into it a new chapter relating to the preparation of a record of writs, and the machinery for settlement of rents by revenue officers.

5. NORTH-WEST PROVINCES AND OUDH.

Acts passed—None.

6. PUNJAB.

Acts passed—1.

Interpretation.—The single Act of the Punjab Legislature is a Punjab General Clauses Act, framed on the same lines as the General Clauses Act of the Government of India.

7. BURMA.

Acts passed—4.

Interpretation.—The Burma General Clauses Act, No. 1, is of the same character as the Punjab Act just mentioned.

Ferries.—The Burma Ferries Act, 1898, No. 2, embodies a comprehensive law as to the establishment, control, and superintendence of public ferries, including provisions as to tolls.

Town Government.—The Burma Municipal Act, 1898, No. 3, lays down a law of town government which may be applied to any town in Burma, but will probably be applied in the first instance only to one or two of the principal places, such as Rangoon and Moulmein. It provides

for the constitution of municipalities and the organisation of municipal committees, and contains all the financial, sanitary, and police provisions which are usually to be found in Acts of this nature.

Land.—The Lower Burma Town and Village Lands Act, 1898, No. 4, defines the mode in which rights may be acquired in land. No right of any description as against the Government is to be deemed to have been or to be hereafter acquired by any person over any land in any town or village, except rights created by grant or lease made by or on behalf of the British Government, rights acquired as against the British Government under the Indian Limitation Act, 1877, rights originating and acquired in manner described by the Act, and rights derived from these sources. Subject to certain exceptions, a landholder's right may be acquired by continuous possession for twelve years, but a landholder's right ceases if he abandons possession of the land for two years continuously. Provision is made for a record of landholders' rights being kept by the revenue officer. The Act also defines the mode in which land at the disposal of the Government may be disposed of, and defines the procedure for evicting persons who are in possession of, but have not acquired rights over, State land. It declares all State land liable to be assessed to land revenue except land which at the commencement of the Act belongs to the site of any monastery, pagoda, or other sacred building, and continues to be used for the purpose of that building, land exempt from assessment under the express terms of any Government grant or lease, and certain building plots in towns and villages. Besides the record of land rights, the revenue officer is required to keep in certain towns a roll of town lands, containing the names of the persons in possession of all lands within the town. Entry of a person's name in the roll is *primâ-facie* evidence of his possession, and fixes him with liability for Government demands in respect of the land.

8. REGULATIONS UNDER 33 VICT., No. 3.

(For the less advanced Districts of British India.)

Hill Tribes.—Regulation No. 1 makes a few amendments in the Kachin Hill Tribes Regulation, 1895.

Canals.—The Peshawur Regulation, 1898, contains a code of elaborate rules for the control and management of canals in the districts of Peshawur, including provisions as to the circumstances under which the right-holders of canals—that is to say, the persons entitled to the use of the water or to any other beneficial interest in the canal—are to furnish unpaid labour for the purpose of clearing out silt or maintaining the canal in a state of efficiency. The collector is to keep records for canals showing the custom

or rule of irrigation, the rights to water, and the conditions under which they are enjoyed, and the rights as to the erection, repair, reconstruction, and working of mills.

Forests.—The Upper Burma Forest Regulation, 1898, contains a code of forest law of the same general character as the forest codes which have been enacted for other parts of India.

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—22.

Widows and Orphans' Fund.—By No. 1 the Ordinances relating to the pension fund for widows and orphans of public officers are amended and consolidated. The scheme was begun in 1885 and amended in 1896. There is an abatement of four per cent. on the monthly salary of every public servant for thirty-five successive years, or until the age of sixty-five is reached. An officer who retires from the service on pension has to submit to an abatement from his pension of 4 per cent. until the above period is reached. If such pensioner has no wife, or male child under eighteen, or female child unmarried and under twenty-one, and intimates his intention not to contribute further, he may retire, but without claim on the fund. The pensions are to be computed according to tables to be approved by the Governor.

Defence of the Island.—The next Ordinance (No. 2) is a measure of considerable importance in the history of Imperial defence. Hitherto the colony has had to pay to the Imperial Government an annual sum fixed by the latter. The sum has been altered from time to time; but for many years, during which the garrison of the island has been reduced, the sum has been held by the planters and the unofficial, as well as most of the official, members of the council to be largely in excess of the sum actually expended by the Imperial authorities. The dissatisfaction has led to heated debates in the Council, and to voluminous correspondence between the Governor, the Colonial and War Offices, and the Treasury.

The settlement now arrived at is as follows: "A sum equivalent to $9\frac{1}{2}$ per cent. of the colonial revenues shall be appropriated yearly to the Imperial Government for the defence of the island."

The colonial revenues for the purposes of the Ordinance are the gross receipts from all sources of revenue, but do not include proceeds of land

sales; and in the case of the Government railway the charges for maintenance, interest, and sinking fund are deducted.

The contribution is to be deemed to be paid in full return for the annual cost of the Imperial garrison, military works, and buildings. It is not in any year to exceed three-quarters of the cost of the garrison for that year.

It may be observed (1) that no minimum or maximum contribution is fixed, (2) that there is no hint as to the strength of the garrison which the Imperial Government engages to maintain, and (3) that there is no provision for ascertaining the expenditure of the Imperial Government upon Ceylon.

Criminal Law.—In 1883 Ceylon adopted, with amendments, the Penal and Criminal Procedure Codes of India. The Procedure Code has been frequently amended since, and is now reissued with those and fresh amendments.

During recent years there has been a remarkable recrudescence of crimes of violence among the Sinhalese, principally those of the low-country villages. A new chapter on knives is now added to the Repression of Crime Ordinance of 1896. When a person is convicted of a crime in which the knife has been used, and is sentenced to imprisonment, the court may in addition to the sentence make an order prohibiting him from wearing or possessing a knife except under license, which may be granted by the Government agent; but the knife must be used and kept only outside his house, presumably for agricultural purposes. A police magistrate may also call upon any person to show cause why a similar order should not be made against him. It may be noted that "knife" does not include a penknife.

Export of Arrack.—An Ordinance (No. 7) which seems at first sight to be of very doubtful policy imposes a duty of Rs.1·25 per gallon on the export of arrack.

Branding and Sale of Cattle.—Very ample powers are given by Ordinance No. 10 to the Governor for making regulations as to vouchers of cattle sales, branding cattle with marks of identification according to districts, in addition to those of the owner. Cattle-stealing and false charges of cattle-stealing are among the most favourite diversions of the rural Sinhalese.

Boards of Health and Improvement.—An amending and consolidating Ordinance (No. 13) takes the place of a number of existing public health laws.

Copyright in Telegraphic News.—The Telegram Copyright Ordinance (No. 13) protects telegraphic messages coming from places outside Ceylon, and published in any Ceylon newspaper for a period of forty-eight hours from the time of first publication, or sixty hours from the time of first receipt of the message (Sundays and holidays excepted), whichever period first elapses.

2. STRAITS SETTLEMENTS.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

Ordinances passed—14.

Protected States.—The Resident-General Federated Malay States Incorporation Ordinance, 1898, No. 1, recites that it is expedient for conveyancing purposes to incorporate the Resident-General of the Federated Malay States, and proceeds to incorporate accordingly Sir Frank Swettenham and his successors. The object of the Ordinance is doubtless to remove difficulties which have been experienced elsewhere in connection with the style, title, and status of the authorities administering protectorates and protected states.

Marriage.—Until 1898 the celebration of Christian marriages in the Straits Settlements was regulated by the Indian Marriage Act, 1865, of the Government of India, supplemented by the Marriage Registrars Ordinance of 1880. The Christian Marriage Ordinance, 1898, No. 3, supersedes these two enactments. Under it marriages may be solemnised—

(i) by any person who has received episcopal ordination, provided that the marriage be solemnised according to the rules, rites, ceremonies, and customs of the Church of which he is a minister;

(ii) by any clergyman of the Church of Scotland, provided that such marriage be solemnised according to the rules, rites, ceremonies, and customs of the Church of Scotland;

(iii) by any minister of the Presbyterian Church of England whose appointment as such minister has been notified by the Colonial Secretary in the *Gazette*;

(iv) by any minister of religion licensed under the Ordinance to solemnise marriages;

(v) by, or in the presence of, a marriage registrar appointed under the Ordinance.

The hours of marriage, in the absence of a special license, are between six in the morning and seven in the evening.

Where a minister of religion solemnises a marriage, he has to keep a marriage register book with entries in duplicate, and to send one of the duplicates to the marriage registrar. There is a saving (s. 69) for marriages under the Imperial Foreign Marriage Act, 1892, and for certain other consular marriages.

Pawnbrokers.—The Pawnbrokers Ordinance, 1898, No. 4, supersedes the Ordinances of 1872, 1889, and 1895, and lays down provisions which should be compared with those of the English Pawnbrokers Act, 1872, 35 & 36 Vict., No. 93. A pawnbroker is not to take in pawn a pledge exceeding two hundred dollars in value except on a reference to some householder, who must vouch for the respectability of the pawner, and undertake

to trace him if necessary. The time within which a pledge is to be redeemable, subject in certain cases to special agreements, is three months from the date of pawning, as distinguished from twelve months under the English Act.

Civil Procedure.—The Civil Procedure Ordinance Amendment Ordinance, 1898, No. 6, amends the Civil Procedure Ordinance of 1878 in a few minor particulars, and amongst other things provides that where no other provision is made by any law in force for the time being, the procedure and practice for the time being in force in the Supreme Court of Judicature in England is, as near as may be, to be followed and adopted.

Pilgrims.—The Pilgrim Ships Ordinance Amendment Ordinance, 1898, No. 9, makes a few minor amendments in the Ordinance of 1897.

Lepers.—The Lepers Ordinance, 1898, No. 10, contains provisions with with which we are becoming unfortunately familiar in different parts of the Queen's dominions. It enables the Governor-in-Council by notification to prohibit the carrying on by a leper of certain trades and callings, and subjects him to penalties if he does so. It is also an offence if a leper enters any hackney carriage or other public vehicle, or lodges in a hotel, boarding-house, or lodging-house, or bathes in any public baths. There is power for the Government to establish leper asylums and to provide for the detention of vagrant lepers; and provision is made for preventing foreign lepers from being landed at ports of the colony.

Coin.—The Importation of Yen Prohibition Ordinance, 1898, No. 11, prohibits the importation into the colony of Japanese dollars or yen.

3. HONG-KONG.

[*Contributed by* EDWARD MANSON, ESQ.]

The Number of Ordinances for 1898 was thirty; but very few are of any general interest. Eleven are naturalisation Ordinances.

Opium (Divans) (No. 1).—The Prepared Opium Ordinance, 1897, required opium divans to be licensed by the Colonial Secretary. The present Ordinance enlarges the definition of an opium divan. Regulations for the management of such opium divans are made (March 1st, 1898); among others, the licensed keeper is to provide two photographs of himself for identification.

Bribery (No. 3).—This Ordinance makes the acceptance of a bribe by any "public servant" punishable with two years' imprisonment with or without hard labour. Offering a bribe is punishable in the same way. "Bribe" has a wide signification. It is to include "any fee, perquisite, reward, or qualification, whether pecuniary or otherwise, not payable or receivable by law."

Building Ordinance (No. 11).—All private house drains are by this

Ordinance to be laid as may be directed by the Sanitary Board and connected with the Government main sewer.

Conspiracy (No. 14).—This Ordinance makes a conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, punishable with three years' imprisonment, or fine, or both.

Trademarks (No. 18).—This Ordinance, dealing with the registration of trademarks, follows closely the English legislation on the subject.

Liquor Licenses (No. 24).—This Ordinance consolidates the law as to the above. It prohibits unlicensed distilling and unlicensed sale. It allows, however, wholesale or retail sale under a grocer's license (s. 7). SS. 9-15 prescribe the mode of application for a license, the fee, and the duration of the license. S. 16 provides for transfers. S. 20 prescribes regulations for the management of licensed premises. No game of chance is to be played. No pledges are to be taken in payment for liquor in lieu of money (s. 23). Suspected premises may be searched (s. 25). A Chinese restaurant may apply for a license (s. 31).

Sale of Poisons.—Regulations made under Ordinance 24 of 1887, and published September 17th, 1898, require all poisons sold to be labelled "Poison" in both English and Chinese characters, and the name and address of the seller to be put on the bottle. The date of sale and name and address of the purchaser is also to be entered in a book. There are special regulations as to arsenic.

Cemeteries.—These, both non-Chinese and Chinese, are dealt with by regulations made November, 1898, under Ordinances No. 24 of 1887 and No. 12 of 1891.

IV. AUSTRALASIA.

1. VICTORIA.

[*Contributed by* H. E. Gurner, Esq.]

Acts passed—84

(between December 2nd, 1897, and December 20th, 1898).

Of the Acts passed in the first and second session of the Seventeenth Parliament of the Colony of Victoria, a very large proportion are merely local in their character. Amongst those worthy of notice are the following:

Dangerous Buildings (No. 1519).—The Dangerous Buildings' Removal Act, which provides for the speedy removal of any dangerous building within the city of Melbourne. It is somewhat similar in character to the corresponding Acts here. This Act is a tentative measure, as it is only to continue in force until December 31st, 1899. It is remarkable in some of its provisions. By s. 8 the workman is to be paid 1*s.* 3*d.* per hour,

notwithstanding any agreement to the contrary. By s. 9 any workman injured while at the work is (*a*) to be paid during total or partial disablement the full wages at which he was employed for the period during which he is so partially or totally disabled, but in the whole not exceeding three years; (*b*) if he die, then three years' wages are to be paid to his representatives, or, if he leaves no dependants, then the reasonable expenses of his medical attendance and burial. Nothing is to affect the existing civil liability of the employer, and if the injuries or death are caused by the serious and wilful misconduct of the workman, the employer is not liable.

Evidence (No. 1554).—The Evidence Act of 1898 requires all courts of the Colony of Victoria to take judicial notice of all Acts of any Australasian colony, also of orders in council or despatch of any Secretary of State: the *primâ-facie* evidence to be in one case the Government printer's copies and in the other the *London Gazette*.

By s. 10 the signatures of certain officers therein mentioned are to be judicially noticed.

Drugs (No. 1572).—By the British Pharmacopœia Act, to be read as one with the Medical Act of 1890 (No. 1118), the British Pharmacopœia is substituted for the pharmacopœia in force in Victoria at the time of the passing of the Act.

Wages not to be Attachable (No. 1573).—The Wages' Attachment Act provides that after the commencement of this Act no order shall be made by any court or judge or justice attaching the wages of any clerk, servant, or labourer except as provided by s. 3. That section provides that if the amount exceeds £2 per week, whether payable yearly, monthly, weekly, or daily, or by piece or at a fixed price, or otherwise howsoever, any surplus above that rate may be attached, but no costs or expenses of any such attachment, other than sums paid for court fees or stamps, shall be chargeable against such person unless the rate of wages exceeds £4 per week. S. 4 defines wages and workman, and makes an independent contractor come within the scope of the Act.

Railway Committee Fees (No. 1579).—The Railway Standing Committee Act provides for the payment of one and a half guineas to the chairman, and one guinea to the members of this committee, for each attendance.

S. 4, sub-s. 2, limits the amount so paid to an aggregate sum of £1250; and s. 5 provides that the payment does not constitute the offices of chairman and members as an office or place of profit under the Crown.

Marriage (No. 1582).—The Marriage Act, 1898, by s. 5, provides that the following persons may celebrate marriages:

(1) A minister of religion whose name is registered in the office of the Government statist.

(2) The Government statist or any registrar of marriages heretofore or hereafter appointed.

Under s. 7 a minister of religion is one ordinarily officiating as such in one of the religious denominations, or one officiating in a denomination which has been declared in the *Government Gazette* to be a religious denomination.

Then follow a number of sections defining who shall be registered and who not, in order to prevent improper persons being so registered. An appeal from the Government statist's refusal to register is given, and it is to the responsible minister of the Crown.

By s. 14 (*a*) any minister who has been convicted of felony or indictable misdemeanour, or (*b*) who is guilty of any misconduct in the celebration of any marriage, or (*c*) is guilty of such impropriety as to time, mode, manner, or place, or (*d*) is guilty of any breach of the Marriage Acts, may be prohibited from celebrating marriages by the Governor in Council.

A court of inquiry of not less than three persons nor more than five, of whom a county court judge must be one, is to be appointed to enquire into any charge of misconduct before prohibition.

By s. 17 any unauthorised person celebrating a pretended marriage incurs a penalty of £20.

By s. 18 Quakers and Jews are exempted from the operation of this Act.

Marriages may be prohibited in certain houses or buildings by publication in the *Government Gazette*. No such order shall, however, be made in the case of a house or building *bonâ fide* used as a place of worship.

By s. 23 a written notice of an intended marriage before the Government statist or registrar must be posted outside his office at least three days before the performance of the marriage. The marriage must also be celebrated with open doors. No marriage shall be avoided by non-compliance with these provisions, but a penalty not exceeding £20 for their breach is provided.

Marriage must take place between the hours of 8 a.m and 4 p.m.

By s. 25 the mother, in the case of marriage of minors, must give her consent if she has been unlawfully deserted by her husband or obtained a protection order or judicial separation or divorce from her husband.

By s. 31 all persons having in their possession or control any register or books of entries or register books of baptisms, marriages, and burials in the district of Port Phillip, in the Colony of Victoria, prior to January 18th, 1853, are required within six months from the commencement of the Act to send them to the Government statist, or they may send copies verified by statutory declaration, and give an undertaking to produce the books at any reasonable time to any person on payment of a fee of 5*s*., and shall also, if required, supply a certified copy of any entry to such person.

Drainage (No. 1583).—The drainage areas Act of 1898 gives certain powers to the district council, but seems to be of purely local interest.

Inspection and Storage of Export Produce (No. 1591).—The exported products Act provides for the thorough inspection of livestock, butter, cheese, meat, fruit, and dairy produce, and the storage in cool stores prior

to exportation of all perishable goods in those classes. The inspectors shall mark each case with the Government stamp. Any person altering or using such stamp when once used, or mixing any product so examined with any other not examined, is subject to a penalty of £50 or twelve months' imprisonment.

Registration: Illegitimate Child (No. 1593).—The Registration of Births, Deaths, and Marriages Act provides by s. 23 that when a father of an illegitimate child is the informant, and desires to be registered as the father of the child, the surname of the child shall be the same as that of the father.

Dentists: Examination (No. 1595).—The Dentists Act, to be read as one with part two of the Medical Act of 1890, provides for the examination of dentists by a board, called a dental board, constituted as mentioned in the Act, and provides penalties for unlicensed persons carrying on the business.

Land (No. 1602).—The Land Act of 1898, to be read as one with the Land Act of 1890, is a long and complicated Act of 184 sections. Acts of this kind are passed throughout the colonies every few years. Those interested in pastoral pursuits in the colony will without doubt procure the Act itself, but to ordinary readers it is of mere passing interest.

2. QUEENSLAND.

[*Contributed by* W. F. Craies, Esq.]

Acts passed—27[1]; General, 21; Local and Personal, 3; Private, 3.

Constitution.—No Act was passed in 1898 (62 Vict.) adhering to the scheme of Australasian federation,[2] nor was any legislation passed affecting the colonial constitution. The official edition of the statutes for 1898 contains (in Appendix II.) the letters patent of 1877, constituting the office of Governor of the colony, the instructions by Lord Knutsford of 1892 as to the Governor's duties, especially as to exercise of the prerogative of pardon, and the dormant commission of 1898, constituting the chief or senior justice of the colony Lieutenant-Governor on the death, incapacity, removal, or absence from the colony of the Governor.

Codification.—The most considerable measure of the session was the Criminal Code of seven hundred and thirty-three clauses, prepared by Sir S. W. Griffith, Chief Justice of the colony. But it was judged wise to refer it to a royal commission, and to defer consideration of its contents till receipt of a report from the commission: (1) on the expediency of enacting a criminal code; (2) the completeness of the Bill, having regard

[1] As to the mode of numbering and classifying the statutes see *Journal*, N. S., vol. i., p. 103, *n.* 2.

[2] Such Act was passed in 1899, 63 Vict., No. 1, providing for a referendum.

to the existing law of the colony; (3) the changes in the existing law proposed by the Bill; (4) the expediency of making additions, omissions, or alterations.[1]

Elections.—62 Vict., No. 14, makes a number of minor amendments to the Consolidation Act of 1897,[2] and contains a provision as to their incorporation in future prints of the amended Act.

The Act establishes a principal electoral registrar to control the district registrars of electors, and disqualifies certain justices from sitting in revision courts (s. 4).

Juries.—The Jury Act of 1898, 62 Vict., No. 3, exempts engine-drivers in mines from jury service, and provides for the making by the Governor in Council of regulations as to compensation for loss of time and travelling expenses to be made to jurors attending the Supreme Court or circuit or district courts.

Evidence.—The Evidence Act of 1898, 62 Vict., No. 15, was passed to facilitate the proof of Acts of Parliament and of judicial and official documents, seals, and signatures of other Australasian colonies. It is in aid of the common law rules and other statutory provisions (s. 14). All courts and persons acting judicially in Queensland are to take judicial notice of every Australasian colony, and the extent of its boundaries, and of its Acts of Parliament, and of the impression of its public seal (ss. 3 [1], 4).

Copies of Acts of any Australasian colony purporting to be printed by the Government printer of the colony are to be taken *primâ facie* to be correct copies without further proof, and the date of the royal assent on the copy is to be accepted as correct (s. 3 [2]). And by s. 12 editions published by the Government printer of a colony under authority are to be received as *primâ-facie* evidence of the statutes and laws in force in such colony.

Primâ-facie evidence of royal proclamations, orders of the Privy Council, and of rules, orders, and regulations by departments of the Imperial Government may be given by production of a copy of the *London Gazette* or of the *Queensland Government Gazette*, purporting to contain a reprint of the document in question (s. 5).[3]

S. 6 provides for the proof of similar documents issued by the Governor or public departments of Australasian colonies, by copies of the *Government Gazette* of the issuing colony, or of copies purporting to be printed by the Government printer, or of a written copy certified by the clerk of the Executive Council in the case of executive orders, or by a minister in the case of departmental documents, in either case without proof of handwriting.

By s. 7 documents admissible under the law of an Australasian colony

[1] Some of the clauses in the draft, as published in 1897, require consideration from an Imperial point of view, as purporting to create jurisdiction to try certain acts or omissions by persons outside the colony.

[2] *Journal of Comparative Legislation*, N. S., vol. i., p. 104.

[3] This section loses sight of the change effected by the Imperial Rules Publication Act of 1893 (56 & 57 Vict.) in the mode of publishing many of the documents referred to, and does not render the Imperial official edition of the Statutory Rules evidence in the colony.

without proof of the seal, stamp, or signatures authenticating them, or of judicial or official character of the certifying person, are admissible in Queensland on the same terms.

S. 8 permits proof by certified copy over each of the books or other documents of another colony, if it is of such a nature that if it were a Queensland book it would be admissible in evidence on production from the proper custody.

S. 9 deals with proof of proceedings of Australasian legislatures.

S. 10 directs the judicial notice in Queensland of the seals and signatures of a number of named officials of Australasian colonies, and empowers the Governor in Council gazetted by order to add to the list.

S. 11 provides that when by a statute of another colony public or corporation documents or certified copies are receivable in evidence, they shall be equally receivable in Queensland if they purport to be sealed or stamped or signed in accordance with the law of the colony from which they emanate.

S. 13 requires Queensland courts to accept as *primâ-facie* evidence of the incorporation of a company in another colony a certificate of incorporation or registration purporting to be signed by a person whose authority to certify is verified by statutory declaration.

Copyright.—The Copyright Registration Act of 1898, 62 Vict., No. 13, transfers to the Registrar of Patents, Designs, and Trademarks the duties, powers, and authorities given by the Colonial Copyright Acts to the Registrar-General (ss. 2-4); empowers a deputy to act in his absence (s. 3); and validates certain acts done by him prior to the Act, he having for a time usurped or exercised the functions of the Registrar-General.

British Probates.—The British Probates Act of 1898, 62 Vict., No. 10, provides for the recognition of probates and letters of administration granted in other parts of her Majesty's dominions. The scheme of the Act is to extend such recognition, by order of the Governor in Council, to probates, etc., granted (1) in any part of her Majesty's dominions in which recognition is accorded to grants by the Supreme Court of Queensland (s. 3), or (2) by British consular courts under the Foreign Jurisdiction Acts, subject to similar conditions. The important part of the operative clause (s. 4) is as follows:

> "(1) When a court of probate in a part of her Majesty's dominions to which this Act applies has granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the Supreme Court, be sealed with the seal of that court, and thereupon shall be of the like force and effect, and have the same operation in Queensland as if granted by that court.
>
> "(2) Provided that no probate or letters of administration shall be sealed under this section until there has been filed in the Supreme Court a certificate under the hand of the Commissioners of Stamps

to the effect that adequate security has been given for payment of all probate and succession duty in respect of so much (if any) of the estate as is liable to duty in Queensland.

"(3) The Supreme Court may, if it thinks fit, upon the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Queensland, and also, if it thinks fit, upon the application of any beneficiary or next of kin, require that adequate security be given for the protection of the interests of such beneficiary or next of kin.

"(4) For the purposes of this section a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original."

By sub-s. 5 the Supreme Court is empowered to make rules as to procedure practice, fees, and costs, subject, so far as affects probate or succession duty, to the consent of the Governor in Council.

Estates of Intestates and Lunatics.—61 Vict., No. 4, provides for the local administration of the property of intestates and lunatics by the establishment of branches of the office of curator and the appointment of local deputy curators of such estates in the northern and central judicial districts of the colony. Their duties are regulated as to intestates by an Act of 1877 (41 Vict., No. 24), and as to insane persons by an Act of 1884 (48 Vict., No. 8).

Trustees and Executors.—62 Vict., No. 8, amends the Trustees and Executors Act of 1897[1] by allowing sale or lease by a trustee, with the sanction of the court, notwithstanding the terms of the trust, to raise money to preserve, improve, or insure the court property, or to pay debts (s. 2).

In cases where an infant beneficiary has an undivided interest in land, the court, unless the document creating the interest expresses a contrary intention, may, for the purpose of applying the share for the infant's benefit because of the inadequacy of his income, order the sale of undivided shares in the same land held by other infants (s. 3).

Mining.—The Mining Act of 1898, 62 Vict., No. 24, was the most considerable measure of the session. It contains two hundred and fifty-three sections, and repeals sixteen Acts, and consolidates and amends the law of the colony as to all forms of mining. It is divided into fourteen parts Part II. deals with gold-fields and mineral-fields; Part III. with miners' rights and business licenses; Part IV. with mining leases; Part V. with mining on reserves; Part VI. with coal-mining; Part VII. with mining for gold or silver on alienated Crown lands within the mining areas;

[1] 61 Vict., No. 10: *Journal*, N. S., vol. i., p. 105.

Part VIII. with miners' homestead leases; Part XI. with miners' commons—*i.e.* unleased Crown lands within a mining district, which are allowed to be used for common or stinted pasture for stock by holders of miners' rights, etc., subject to an agistment charge if the stinted number is exceeded. Parts IX., XII., and XIII. deal with the administration of the mining laws and the regulation and drainage of mines. The general scheme of the Act resembles that of the other Australasian colonies.[1]

Medical Profession.—The British Pharmacopœia Adopting Act of 1898, 61 Vict., No. 1, directs that the edition of the British Pharmacopœia published in 1898 under the direction of the General Council of Medical Education shall, as from July 1st, 1899, be the pharmacopœia in force in Queensland (s. 1). By s. 2 the Governor in Council may by proclamation bring into force in the colony any alteration made in the British Pharmacopœia under the direction of the Medical Council.

Local Government.—The only Act affecting local government (62 Vict., No. 9) is one dealing with the suspension of repayment of certain local loans.

Lands.—62 Vict., No. 7, amends the Pastoral Leases Extension Acts, 1892 to 1897, by relaxing the stringency of such leases, which require fencing within a limited time as a condition precedent to obtaining an extension of the lease.

Animals.—The Brands Act of 1898, 62 Vict., No. 21, amends prior Acts as to the registration of brands of horses and cattle, including ear-marks and cheek-brands, and provides for the surrender, cancellation, and re-allotment of brands and marks.

The Marsupial Proof Fencing Act of 1898, 62 Vict., No. 16, is intended to facilitate the erection and ensure the maintenance of wire-netting in districts infested by marsupials, and empowers the granting by the State of advances, secured by mortgage or charge, for effecting this object.

The Game and Fishes Acclimatisation Act of 1898, 62 Vict., No. 17, is intended to encourage the introduction into the colony of deer, antelope, white swans, pheasants, partridges, grouse (!), and quail, and of salmon, salmon trout, trout, perch, and, strange to say, tench. Reserves may be created, acclimatisation societies encouraged, guardians of game appointed, and the protection of the game provided for by regulations as to open and close times, and licenses enforced by a series of penalties closely resembling those of the English game law.

62 Vict., No. 6, amends in a number of minor details the Diseases of Stock Act of 1896.[2]

62 Vict., No. 23, deals with the licensing and inspection of slaughterhouses, and regulates the slaughter of stock and the sale of meat. It is applicable to any district by order of the Governor in Council. Power is given to establish, maintain, and manage public abattoirs out of money provided by Parliament

[1] See *Journal*, vol. i., pp. 71, 72, New Zealand; *Ibid.*, vol. i., pp. 61, 62, Western Australia.

[2] *Journal*, vol. ii., p. 177.

(s. 7), and to appoint inspectors with very large powers as to entry and inspection of slaughterhouses and butchers' shops, and meat, to see that there is no diseased meat on the premises. The penalties for sale of diseased meat or obstruction of the officers (ss. 22, 23) are very stringent, and the burden of proof that meat found was not exposed for sale or intended for the food of man is placed on the accused (s. 25).

Weights and Measures.—62 Vict., No. 18, requires owners of mills, refineries, produce stores, markets, or other such places for the treatment, purchase, or sale of field produce (*i.e.* sugar-cane and other crops) to have in or near the mill, etc., suitable weighing instruments subject to inspection and regulation, and on request to weigh all field produce bought or sold, they must give facilities to the seller or buyer to check the weight by himself or a check-weigher.

3. SOUTH AUSTRALIA.[1]

[*Contributed by* A. Buchanan, Esq.]

Acts passed—General, 26; Private, *nil.*

Australasian Federation.—The Commonwealth Bill Amendment Act, 1899, No. 717, provides for the taking of a referendum upon the proposed Amended Commonwealth Bill.

Crown Lands.—The Crown Lands Amendment Act, 1898, No. 705, provides that leases used solely for pastoral or agricultural purposes, or which are not required for subdivision, may be surrendered for perpetual leases (s. 3) at rents to be fixed by the Surveyor-General (s. 4), provided the lessee does not, including such lease, hold under any tenure more than £5000 of unimproved land values, except where the land is suitable only for pastoral purposes, when the limit of the holding is a carrying capacity of five thousand sheep (s. 5). Lessees may, up to June 30th, 1901, apply for reduction of rent (s. 8). Past reductions of rent are validated (s. 9). The area capable of being held as a working-man's block is increased to twenty acres. Provided the unimproved value does not exceed £100 (s. 10), the rate of interest on loans to blockholders is reduced from 5 per cent. to 4 per cent. (s. 11). Perpetual leases are to be in the prescribed form, and to have the effect of vesting the land leased in the lessee in perpetuity, subject to the rent reservations, covenants, and conditions of the lease.

Pastoral Lands.—The Pastoral Amendment Act, 1898-9, No. 712, abolishes the classification of pastoral lands, and provides that future pastoral leases shall be for a term of forty-two years, subject to a re-valuation of the rent for the second twenty-one years with certain exceptions. In determining

[1] The Session 61 & 62 Vict., here reviewed, commenced June 23rd, 1898, and ended March 3rd, 1899.

the rent regard is to be had to the carrying capacity of the land, its value for agricultural or other purposes, its proximity and facility of approach to railways, ports, and markets, and all other circumstances affecting its value to a lessee (s. 2). Lessees of pastoral lands in Class I., not surrendered under the Act of 1896, may, up to December 31st, 1899, obtain extensions for twenty-one years—from January 1st, 1900—upon the terms of the original leases, if recommended by the Pastoral Board, the Crown not to be liable in respect of any improvements effected after the date on which the original lease would have expired (s. 4). Future pastoral leases are to contain a covenant for the expenditure of specified amounts in improvements (s. 5). Advances may be made to lessees of the cost of wire and netting to make fences vermin-proof (s. 10), to be repaid, with 4 per cent. interest, by twenty annual instalments (s. 12). The time allowed for surrendering under previous Acts is extended (s. 7). Lessees under the Act of 1893, 1895, or 1896, or who have previously surrendered, may come under this Act (s. 18). Lessees under the Act of 1893, 1895, or 1896 may apply for a reduction of rent and re-valuation of improvements (s. 19). The area which may be resumed around artesian waters, found or conserved by the Government, is increased from one to five square miles (s. 20). Act No. 706, of 1898, to amend the Vermin Acts, makes those Acts applicable to the destruction of foxes and wild dogs.

Public Health.—The Health Act, 1898, No. 711, repeals previous health legislation, and makes fresh and much more thorough provisions for securing the proper sanitary condition of the colony. The execution of the Act is entrusted to a central board (s. 12), consisting of a chairman appointed by the governor, and four other members, two of whom are also to be appointed by the governor, and the other two to be elected (s. 13) triennially (s. 16), one by the city and suburban local boards, and the other by all other local boards (s. 17). The Central Board may recover from any local board the expenses incurred in carrying out any duties, or in exercising any power neglected by the local board (s. 19); and may exercise in respect to the whole province any powers which may be exercised by a local board with respect to its particular district (s. 20); and shall have access to all papers of local boards (s. 21).

Every municipal and district council is constituted a local board of health for its municipality or district (s. 23), charged with the execution of the Act in its own district, and particularly to abide by and carry out the directions of the Central Board (s. 24), with power to declare a sanitary rate not exceeding one shilling in the pound on the annual assessment (s. 25), and with power, if the revenue from the sanitary rate prove insufficient, to call in aid the revenue of the municipality or district (s. 28). At the request of the local boards concerned, contiguous districts may be declared a "county district" (s. 29), for which a "county board," of not less than three members, shall thereupon be constituted (s. 30) by election by the local boards forming the county district (s. 31). The powers and duties

of the local boards shall devolve on the county boards, who have also power to establish and carry on chemical and bacteriological laboratories (s. 35), and to require local boards to declare and collect and pay over sanitary rates (s. 36). Every local board is to appoint an officer of health and such inspectors and officers as deemed necessary by the Central Board (s. 40); the officer of health to be approved by the Central Board, and, where practicable, to be a legally qualified medical practitioner, and to have the powers of an inspector (s. 41). Inspectors are to be appointed in writing, and to produce a duplicate of their appointment, if required, when inspecting (s. 42), with powers of entry and inspection between 9 a.m. and 6 p.m. or business hours, and to open drains (s. 43). Provisions are made for the detection (ss. 46-8) and the removal of insanitary conditions (ss. 49-58) and the recovery of the attendant expenses (ss. 59-62). Local boards are to report to the Central Board yearly, and also when directed (s. 63) to furnish monthly returns of infectious diseases (s. 64), and immediate returns of the first reported cases of certain specified diseases (s. 65), and of any outbreak of infectious disease (s. 66). The Central Board shall make an annual report to the minister (s. 67), which is to be laid before Parliament (s. 68). The Central Board may institute formal enquiries (s. 69), and enforce the attendance of witnesses (ss. 70-1).

Part VII. deals with sanitation of sewers and sewage (ss. 75-7), of refuse (ss. 78-80), of offensive trades (ss. 81-8), of water and water supplies (ss. 90-4), of meat and meat supplies (ss. 95-110), including licensing of slaughterhouses (s. 95), providing public slaughterhouses (s. 101), inspection of cattle (s. 104), and the isolation (s. 106) or destruction of diseased animals (s. 108); the sanitation of milk and milk supplies (ss. 111-14), including the contamination of milk (s. 111) and the licensing and regulation of dairies (s. 114); the sanitation of dwelling-houses (ss. 116-23), of factories (s. 124), and lodging-houses (ss. 125-6).

Part VIII. of the Act deals with infectious diseases: their notification (ss. 127-30), disinfection (ss. 131-41), ambulance (ss. 142-3), and hospitals (ss. 144-6).

Free Libraries.—The Free Libraries Act, 1898, No. 700, gives power to municipal and district councils to establish free libraries (s. 2) with the consent of the ratepayers (s. 3), and for the purposes of the Act to borrow moneys not exceeding the amount of ten years' free library rate (s. 5), and to declare a free library rate of not exceeding threepence in the pound on the assessed value (s. 7).

Standard Time.—The Standard Time Act, 1898, No. 699, fixes the mean time of the 142½ meridian east of Greenwich as the standard time for the province, thus moving the clocks on half an hour from the time fixed (on the hour zone system) under the Standard Time Act, 1894; and on May 1st, 1899, when it is to come into operation, leaving a difference of half an hour only, instead of one hour, between the standard time of South

Australia and that of Victoria and New South Wales, except the Sturt and Broken Hill District, where the standard time, having been assimilated to the South Australian Standard Time Act, 1894, will then be half an hour behind South Australian time, presenting the artificial anomaly of the country further east having its clocks behind the country further west.

Wages not to be Attachable.—The Wages Attachment, Act, 1898, No. 697, might more appropriately be styled the "Wages *non*-Attachment Act," for it enacts that no order shall hereafter be made for the attachment of wages of any clerk, servant, labourer, or workman (s. 2), wages being defined to include any consideration for service done or to be done, and workman to mean any person engaged or employed in manual labour or in work of any kind, whether by time, piecework, fixed rate, or otherwise (s. 3).

Legitimation of Children.—The Legitimation Act, 1898, No. 703, provides a means for the legitimation as from birth of children, alive or dead (s. 5), born out of wedlock, but whose parents have intermarried or hereafter shall intermarry (s. 2), by registration on a declaration of parentage (s. 5), before January 1st, 1900, in cases where the parents have intermarried before the Act, and in other cases within thirty days before or after the intermarriage (s. 6). Legitimation under the Act is not to affect interests vested in possession or expectancy prior to legitimation, or by virtue of a disposition made before the Act; nor is legitimation to be valid if at the time of the birth of the child there was any legal impediment to the intermarriage of the parents (s. 4).

Affiliation.—The Affiliation Law Amendment Act, 1898, No. 702, extends the remedies against the father of an illegitimate child to the recovery of not exceeding £10 for confinement expenses (s. 2), including medical and nursing expenses and infant clothing (s. 3). Proceedings may be taken either before or after the birth (s. 5), and if taken before birth there must be proper medical evidence the mother is quick with child (s. 6); and money ordered is to be brought into court, and failing the birth of the child within five months, returned to the alleged father (s. 7).

Sale of Fertilisers.—The Fertilisers Act Amendment Act, 1898, No. 694, amends the Fertilisers Act, 1894, and extends the provisions to all articles for use as fertilisers of the soil except farm manure, crude soil, and unmanufactured refuse (s. 2); provides for the appointment of inspectors of fertilisers (s. 3), to whom manufacturers, importers, and dealers in fertilisers are to notify their place of business and the fertilisers in which they deal (s. 4). Inspectors have power to enter premises and take samples (s. 5) for analysis (s. 6), and result, with names of dealer and prices, is to be published (s. 7). Dealers must brand every package so that it can be identified in the invoice (s. 8[1]), and are liable to penalties if in sales of exceeding one hundredweight of fertiliser they fail to deliver an invoice or to affix an identifying mark to every package (s. 9[1]); and the invoice must, in addition

[1] See New Zealand Act (No. 38) of 1892, ss. 3, 4, and 5.

to the vendor's name and address and the identifying brands of the packages, state the guaranteed percentage of fertilising constituent in each case and its value per unit per ton (s. 10[1]).

Noisy Trades.—The Noisy Trades Act, 1898, No. 708, gives power to municipal corporations and district councils to make bylaws for the licensing and regulation (s. 4) of the trades of boiler-making and wood-cutting, and other trades proclaimed by the governor—on the petition of a municipal corporation or district council only (s. 3)—to be noisy trades (s. 2). No license is required unless within two hundred yards of a dwelling-house (s. 5). No noisy trade carried on under the Act or such bylaws shall on account of the noise thereof be deemed a nuisance or render subject to civil or criminal proceedings the person carrying it on (s. 6).

Licensed Hawkers.—The Licensed Hawkers Amendment Act, 1898, No. 710, revises the scale of fees (s. 3); prohibits the issue of licenses to aliens, except upon proof of sufficient knowledge of the English language and at least two years' residence in the province (s. 4); provides for the issue of general licenses by the treasurer (s. 6) and the division of the fees amongst local bodies rateably with their revenue from rates collected (s. 7). It also provides for the issue by municipal corporations and district councils of smaller fees for local licenses for their respective districts only (s. 5).

Marine Stores.—The Marine Stores Act, 1898-9, No. 716, adopts many of the provisions of the Victorian Act (No. 54) of 1890, and regulates the licensing of collectors of and dealers in marine stores. Collectors are to be licensed by the commissioner of police (s. 3), and must leave their addresses with the police and notify any change of address; produce their licenses on demand; keep marine stores received in an unaltered state for four days or until earlier sale to a licensed dealer; wear or show badges, and deliver up badges on expiry of license (s. 5). Collectors may not lend their licenses, nor sell except to licensed dealers, nor carry on business except between 8 a.m. and 5 p.m., nor use truck unless the owner's name and address and a number is painted thereon in the prescribed manner, nor enter premises without owner's permission, nor, having entered, remain after a request to leave, nor use insulting language, nor be guilty of insulting behaviour; and any collector refusing to leave premises when requested, or guilty of insulting language or behaviour, is liable to arrest by any person without warrant (s. 6). Dealers' licenses and transfers thereof are to be granted by the special magistrate of the nearest local court (s. 9) after ten days' notice to the commissioner of police (s. 10). Dealers must conspicuously exhibit name and fact of license on outside of premises, which are to be open only from 8 a.m. to 6 p.m. on weekdays, except Saturday, when they are to be closed at 2 p.m; keep a register of persons to whom trucks are let out on hire or gratuitously; keep a register of marine stores they become possessed of, showing the day and hour, and name and address of the

[1] See New Zealand Act (No. 38) of 1892, ss. 3, 4, and 5.

person from whom received, and a like register of marine stores disposed of; produce registers to police when required; give notice to police of any article answering descriptions supplied by police of goods stolen; and keep marine stores in an unaltered state for seven days after receipt (s. 13). Collectors must carry on business in licensed premises only, produce license when demanded, and let out trucks to licensed collectors only for not more than prescribed charges, and must not receive marine stores from any person apparently under sixteen years of age, nor by themselves or agents receive marine stores before 9 a.m. or after 6 p.m., or employ any person under eighteen years of age. The Act contains provisions for the revocation of licenses (s. 20); power for the police to enter day- or night-licensed premises and inspect the registers and marine stores therein (s. 22); power for the issue and execution of search warrants (s. 23), and power for licensed dealers or their assistants to seize and detain persons offering marine stores who refuse, or are unable to give, a satisfactory account of themselves or of how they became possessed of the marine stores, or who wilfully give false information, or if there is reason to suspect such marine stores to have been stolen or illegally obtained (s. 24).

Crime.

Valueless Cheques.—The Police Act Amendment Act, 1898-9, No. 715, throws upon every person who passes for value a cheque which is not paid on presentation the onus of proving that he had reasonable ground for believing that it would be paid in full on presentation, and that he had no intent to defraud (s. 2). Possession of money or property is not to be a defence against a charge grounded on want of visible means of support unless it be shown to have been honestly obtained (s. 3).

Betting on Confidence Games, etc.—A person who in or near any public place or house licensed for sale of liquors bets or solicits or encourages any other person to bet on any confidence game or sleight-of-hand trick or other game or trick used as a means of cheating, is to be deemed a rogue and vagabond, as is also any known or reputed cheat loitering in or near such places and having in his possession any instrument of gaming or for cheating (s. 4).

Police.—S. 65 of the Police Act, 1869, relating to the possession of stolen goods, is extended (s. 5). Furious driving (s. 6), unlawful knocking or ringing of door-bells (s. 8), and playing "pitch and toss" or "two up" (s. 9) are made liable to penalties.

Bullies, or Fancy Men.—A male person who lives wholly or in part on the earnings of prostitution, or in any public place persistently solicits for immoral purposes, is to be deemed a rogue and vagabond (s. 10); and s. 12 throws upon a person living with or habitually in company with a prostitute the onus of proving that he is not knowingly living on the earnings of prostitution.

Taxation.—The Income Tax Further Continuance Act, 1898, No. 709,

continues the Act of 1897 for another year (s. 1). Except in the case of fraud, assessments are not to be liable to be reopened for more than three years back (s. 3); and in cases of appeal, if the commissioner does not set down the appeal for hearing within the prescribed time, then the appellant may do so (s. 4).

Married Women's Property.—The Married Woman's Property Amendment Act, 1898, No. 701, adopts the provisions of the Married Women's Property Act, 1893 (England), as to married women's contracts and wills.

4. WEST AUSTRALIA.

[*Contributed by* EDWARD MANSON, ESQ.]

The number of Public Acts passed during the Session was 37.

Lodgers' Goods' Protection Act (No. 2).—The seizure of lodgers' goods to satisfy a distress levied by a landlord on his tenant has been the subject of legislation in England (34 & 35 Vict., No. 79). This Act is designed to redress the same hardship and follows the lines of the English Act.

Warrants for Goods (No. 3).—By this Act the indorsement and delivery of docks, warrants for goods, and similar documents confers on the indorsee as against the indorser as good a title as if the contract evidenced by the warrant had been made with such indorsee.

Beer: Excise Duty (No. 4).—By this Act an excise duty of twopence in the gallon is imposed on all beer, and various careful provisions are adopted for preventing evasion of the duty.

Customs (No. 5).—This Act amends the customs tariff on the importation of animals, clothes, bricks, cheese, iron, hemp, meat, musical instruments, and other things.

Fire Brigade (No. 8).—The object of this Act is to organise a proper system of protection against fire—a matter hitherto much neglected. The scheme of the Act is as follows: It constitutes a central authority, called the Fire Brigade Board, having control of all fire brigades throughout the colony (s. 6). The board is composed of six members, three nominated by the councils of municipalities and three by the "contributing" insurance companies (see *infra*). This board is charged with the duty of extinguishing fires and protecting life and property in case of fire; and for the discharge of that duty the board may provide, maintain, and equip fire brigades, engines, escapes, salvage corps, etc. (s. 14). It may also borrow, with the consent of the Colonial Treasurer, and make bylaws for, among other things (s. 18), the payment of fees to the members of the board and salaries and wages to the officers and members of the fire brigades (s. 21) Volunteer fire brigades are to be registered at the office of the board. A superintendent of fire brigades is to be appointed by the board, with power to inspect any fire brigade (s. 28). S. 29 defines the superintendent's duties in the event of a fire.

Cost of Maintenance.—The expense of maintaining the fire brigades is to be met by contributions as to one-ninth by the Colonial Treasurer, as to four-ninths by the contributing fire insurance companies (calculated ratably on the amount of premiums received), and as to four-ninths by the councils of the municipalities (s. 43).

The owner of any uninsured house or property is liable to pay to the board the expenses incurred by the fire brigades in attending a fire on his premises.

Crown Suits (No. 9).—This Act regulates (Part II.) the mode in which debts, damages, duties, sums of money, lands, or goods due, payable, or belonging to the Crown may be sued for and recovered. Part III. provides the mode in which claims may be enforced against the Crown—to wit, by petition delivered at the office of the Crown solicitor. S. 33 defines what claims against the Crown are within the Act. Not more than £2,000 is to be recovered against the Crown for any personal injury (s. 34).

Juries (No. 10).—This is a consolidating Act.

Numbers of Jury.—In criminal cases the number of jurors must be twelve. In civil cases it is to be twelve, but may be six, at the option of the party requiring the jury. SS. 5 and 6 fix the respective qualifications and liability to serve on common juries and on special juries; ss. 7 and 8 define the disqualifications and exemptions.

Jurors' Book.—SS. 9-16 provide for the compilation of a Jurors' Book, posting the lists, etc.

Summoning.—SS. 17-20 deal with the summoning of jurors.

Challenges.—SS. 21-5 deal with challenges, which are to follow the law of England.

Special and Common.—SS. 26-31 deal with special jurors and the striking of common and special juries.

Fees, Tales, View, Payment are dealt with in ss. 32-7.

Local Inscribed Stock (No. 11).—This amends the Local Inscribed Stock Act of 1897.

Prevention of Crime (No. 13).—The Legislature has in this Act recognised that prevention is better than cure, and to this end provides for a person twice convicted being subjected to police supervision (s. 1) The supervisee must notify his residence and any change thereof to the district police (s. 2): default in doing so renders him liable to a year's imprisonment. The court may order police supervision in lieu of imprisonment (s. 3). S. 4 gives power to the court to order whipping for robbery with violence or an attempt to choke.

Bankruptcy (No. 15).—The scheme of this Act is to provide the machinery for a debtor making a composition with his creditors, or an assignment in their favour without bankruptcy.

Composition or Scheme.—Where a debtor is desirous of adopting the former of these methods he may call a meeting of his creditors, by post or

circular, and make a proposal to them for a composition or scheme of arrangement. This, if accepted by an extraordinary resolution of three-fourths in number and seven-eighths in value of creditors present, is to be binding on the whole body; but it is open to any creditor to apply within seven days to the court to appoint a day to consider the composition or scheme, and the court may reject it if of opinion that the terms are not reasonable or are not calculated to benefit the general body of creditors, or if facts are proved which would justify the court in the case of bankruptcy in refusing a discharge or ordering the debtor to be imprisoned (s. 7). If default is made in payment of an instalment, or the scheme cannot in the opinion of the court proceed without injustice or undue delay, or was obtained by fraud, the court may annul the composition or scheme (s. 7, viii).

Deed of Assignment.—The creditors at the meeting may by special resolution require the debtor to execute a deed of assignment to a trustee. The form and conditions of every such deed are defined by s. 12. It is to operate as a release of all provable debts (s. 14). S. 26 prescribes the duties of the trustee of such deed, and s. 34 provides for his remuneration. He is to consult the wishes of creditors as to realisation (s. 42.)

Goldfields (No. 16).—This amends the Goldfields Act, 1895. Among other amendments no miner's right is to be issued to any Asiatic or African alien (s. 4). A register of buyers and dealers in gold is to be kept at the office of the Department of Mines, open for inspection (s. 20).

No. 19 authorises the construction of works for the supply of water to the Coolgardie Goldfields.

Agricultural Lands (No. 20).—By this Act no person holding more than one thousand acres is to be eligible to select land under the principal Act —the Agricultural Lands' Purchase Act, 1896.

Police (No. 21).—This empowers any member of the police force to prosecute for any breach of or offence against any bylaw or regulation made by any municipality roads board or board of health.

Marriage: Jews (No. 23).—By this Act, amending the Marriage Act, 1894, marriages between parties both of whom are Jews are only to be celebrated by a minister of the Jewish religion.

Health (No. 24).—This is an important enactment of two hundred and forty-six sections, divided into twelve parts. Part I. deals with the health authorities. It establishes a central board of health of five members, comprising a medical practitioner, a civil engineer, and a practical builder. This central board is to control the local boards. Part II. authorises every local board to levy a public health rate. Part III. authorises the central board to make bylaws (s. 32). Part IV. prohibits the adulteration of food, with a saving in favour of a seller proving ignorance; also the sale of food and drugs not of the proper nature, substance, and quality. A local board may appoint analysts (s. 57). SS. 69-75 provide for proceedings against offenders. Part V. deals with common lodging-houses. Part VI. deals with dwelling-

houses. Part VII. deals with infant life protection, requiring houses of persons receiving infants for nursing to be registered. Part VIII. deals with infectious diseases and land quarantine: epidemic and contagious diseases are to be reported. Part IX. provides for hospitals. Part X. deals with nuisances generally, offensive matter, slaughterhouses, pollution of water, morgues, etc. Part XI. provides for the enforcement of the Act. Part XII. regulates legal proceedings.

Insect Pests (No. 27).—Under this Act the Governor may appoint inspectors of orchards and gardens. An inspector finding disease is to notify the fact to the occupier and Secretary of Agriculture. Such orchard or garden is then to be deemed an infected place, from which no plants or fruit are to be removed (s. 7). Offering for sale any diseased plant or fruit is made an offence (s. 17).

Companies, Foreign (No. 28).

Colonial Register.—The importance of regulating immigrant foreign companies is coming home to most of the colonial legislatures. The present Act requires the attorney of every foreign company carrying on a mining, timber, or land business in the colony to keep at its office a register of its shareholders, to be called a colonial register, and to register transfers of shares in the same manner and at the same charges as in the register kept at the head office of the company (s. 3).

Notices of Meeting.—These are to be issued from the registered office of the company within the colony.

Mining on Private Property (No. 29).—This Act empowers the Minister, with the approval of the Governor, to grant to any person a gold-mining lease of any private land; but conditions—as to the consent of the owner and the depth of the working—are imposed in the case of mines under gardens, orchards, or vineyards, or under private land in any municipality or town site (s. 6). There is an exception also as regards churches and cemeteries (*ibid.*). S. 8 defines the mode of entry upon and marking out private land. The holder of a miner's right may agree—in writing—as to the amount of purchase money or compensation (s. 10). Where no agreement, the warden is to fix the amount (s. 12).

Prospecting.—Any person being an applicant for a lease of any private land, and being desirous of testing such land, may apply for a prospecting area of such land not exceeding five acres.

Construction of Acts (No. 30).—The salutary object aimed at in this Act is the consolidating of enactments relating to the construction of Acts of Parliament and for shortening the language used in Acts of Parliament. For example, a number of common form sections are set out in a schedule lettered A B C, etc., and may be incorporated by reference to the schedule and letter.

Zoological Gardens (No. 32).—This Act provides for the establishment of zoological and acclimatisation gardens, to be under the management of a

committee of six members, open every day to the public on such payment as the committee may prescribe.

Publican's License (No. 34).—This Act evidences the progress of woman. "No person of the female sex who, being of the age of thirty years or more, is a widow or a married woman, living apart or divorced from her husband, shall be disqualified to hold a publican's general license, or a wine and beer license, by reason only of her sex" (s. 2). S. 3 disallows a person as a *bonâ-fide* traveller unless the place where he lodged during the preceding night was at least three miles distant from the place where he demands to be supplied with liquor.

Workmen's Wages (No. 35).—This Act is one of considerable importance to the wage-earning class. By s. 4 the wages due to workmen employed on any contract are to be a first and paramount charge on the moneys due to the contractor in respect of the work, but the amount is limited to £10. Workmen whose wages are in arrear may attach moneys in the hands of the employer (s. 7). In the absence of an agreement in writing to the contrary, the wages of manual labourers are to be paid weekly (s. 3).

Early Closing (No. 36).—By this Act every shop is to be closed daily at 6 p.m. except Wednesday or Saturday (s. 7), and for a half holiday once a week except any week in which a public holiday falls (s. 8). A penalty of £5 is imposed on any shopkeeper keeping a shop assistant in the shop more than three-fourths of an hour after closing-hours (s. 9). A woman or person under sixteen is not to be employed more than forty-eight hours in any one week, exclusive of meals (s. 11). Inspectors are to be appointed to enforce the Act (ss. 4, 14). The provisions of ss. 7-10 are not to apply to certain scheduled shops—*e.g.* chemists, fish, tobacconists, butchers, newsagents, florists.

Crown Lands Act (No. 37).—This is a very elaborate Act, dealing with the sale, occupation, and management of Crown lands under the divisions respectively of reserves, purchases by auction, conditional purchases (agricultural lands: poison lands), free homestead farms, working men's blocks, and pastoral lands.

5. TASMANIA.

[*Contributed by* JOHN W. FEARNSIDES, ESQ.]

Acts passed—Public, 69[1] (of which three were reserved for Royal Assent); Private 2.

Appropriation.—Nos. 1, 56, 57, and 58.

Defacement of Property.—No. 5 prohibits all painting or delineation

[1] The Legislature seems to have been more active this session than the foregoing, having passed 69 Public Acts as compared with 22; but it should be stated that a considerable proportion of the former number are of local significance only.

upon any rock, tree, or other thing in a public place, the property of the Crown or of a municipality, and the display of printed or pictorial matter, or any advertisement or sign upon private property, without the consent of the owner or occupier (s. 2); gives power to the Governor in Council to proclaim (subject to certain reservations) any tract of land a pleasure resort, or any road a tourist road (s. 5); and makes it an offence in any such resort or road to mark any rock or tree, or to disfigure any grass or shrub (s. 6).

Customs.—No. 7 is ancillary to the wide, consolidating Act of the previous session. There is a long list of articles exempt from all duties set out in the last schedule.

State Advances on Land.—No. 8 is an Act of some importance, whereby the State is empowered to lend money to cultivators of the soil upon the security of their land upon easy terms. The Act is to be administered by commissioners, not exceeding three, nominated by the Governor in Council (s. 4). The commissioners may issue mortgage bonds to the amount of £100,000, interest not to exceed 3 per cent. per annum (s. 12). Principal and interest are guaranteed by the Government (s. 13); and the bonds are made redeemable in a certain manner (s. 17).

The amount of any advance shall not exceed three-fifths of the actual value of freehold land at the time of the advance, nor shall any greater total sum than £500 be advanced to any one person (s. 21). Repayment of advances by borrowers, and formation of a reserve fund to meet any losses, are provided for (ss. 23, 26).

Vaccination.—No. 9 begins by repealing the Vaccination Act, 1882.

Every medical man, if willing to serve, is appointed a public vaccinator (s. 4); is paid for his services by Government (s. 6); and must give certificate of vaccination (s. 15).

Every parent is required to cause his child to be vaccinated within twelve months of birth, with penalty upon neglect; but he is exempt from such penalty if he make a statutory declaration that he conscientiously believes that vaccination will be permanently detrimental to the health of his child, such declaration to be also forwarded by him to the registrar of births of his district (s. 8).

Every vaccination certificate or statutory declaration must be entered in the register of births by the registrar (s. 17).

Merchant Ships' Officers' Examination.—No. 19 is passed agreeably to and in accordance with the Merchant Shipping Act, 1894 (Imperial Parliament), so far as that relates to examinations of this character. The Act does not become operative until it has been approved by an Order in Council by her Majesty.

First Offenders' Probation.—No. 20 gives authority to the court to suspend the execution of any sentence upon a first offender, he, meanwhile, entering into recognisances, with or without sureties, to be of good behaviour

for the term of the sentence, or, if that be a term less than twelve months, then for twelve months.

Assessment of Real Property.—No. 33 deals with the method of assessing the value of real property for taxation purposes; is a consolidating and amending Act of sixty sections, but seems to present no features of general interest.

Trustees.—No. 34, like the foregoing, is a consolidating and amending Act, containing sixty-five sections, and defines with fulness the rights, powers, and liabilities incidental to the office of a trustee.

The list of authorised investments (s. 5) is a wide one. The powers of a company authorised by law to act as a trustee are extended by providing that, where appointed, a company is to be deemed for all purposes a trusteeship of more than one trustee, unless the instrument creating the trust expressly prohibit (s. 29). Trustees may, with the sanction of the court, raise money by mortgage upon the trust property for its preservation or improvement, notwithstanding any directions contained in the instrument under which the trust arises (s. 60). Remuneration of a trustee is allowed (s. 58), where not enjoined in the instrument under which he acts.

Education.—No. 37. The exemptions granted to parents from the compulsory daily attendance of their children at school are liberal (s. 21).

Payment of fees is to be enforced by distress only (s. 5).

Police Regulation.—No. 48. A consolidating and amending Act, it embraces the appointment, powers, duties, and discipline of all police constables, whether ordinary or special, and the superannuation of the former.

6. NEW SOUTH WALES.[1]

[*Contributed by* A. R. Butterworth, Esq.]

Acts passed—Public, 47; Private, 2.

Prefatory Observations.—The statutes passed in 1898 show that the work of consolidation and revision begun in 1897 is making rapid progress. Of the forty-seven public Acts, twenty-seven are consolidating Acts, and one is a Statute Law Revision Act (No. 28), which repeals some six hundred obsolete statutes.

Of the consolidating Acts, the more important deal with the law relating to Trustees (No. 4), Evidence (No. 11), Wills, Probate, and Administration (No. 13), Conveyancing and Real Property (No. 17), Licensing (No. 18), Bankruptcy (No. 25), Stamp Duties (No. 27), Lunacy (No. 45), and Seamen

[1] In 1898 there were two sessions of Parliament. In the first the Acts Nos. 1 to 28 were passed, receiving the Royal Assent between July 1st and 27th; in the second session the Acts Nos. 29 to 47, and the two Private Acts, were passed, receiving the Assent between October 28th and December 29th.

(No. 46). The most important Act introducing changes in the law is the Immigration Restriction Act (No. 3).

Immigration Restriction.—The Immigration Restriction Act, 1898, No. 3, is a new departure in the legislation of New South Wales. The earlier Acts restricting immigration were limited to Chinese.[1] The present Act is founded on the Immigration Restriction Act, 1897, of Natal [2] (reproduced in Western Australia as No. 13 of 1897 [3]), though it is considerably less extensive than the Natal Act. The present Act prohibits, subject to certain exemptions (ss. 2, 6, 7), the immigration into the colony by land or sea of any "prohibited immigrant"—that is to say, any person who when asked to do so by a specified officer "shall fail to write out in his own handwriting in some European language, and sign, an application" claiming exemption in the form set out in a schedule (s. 3). A prohibited immigrant cannot hold a license, acquire land, or vote (s. 9); and if any such immigrant makes his way into the colony in disregard of these provisions, he is liable to be fined, imprisoned for six months, and removed from the colony (ss. 4, 14); whilst a person appearing to be such an immigrant must before landing deposit £100, which may be forfeited if he do not within one week obtain a certain certificate that he does not come within the prohibition (s. 5). Heavy penalties are imposed on the masters and owners of vessels and others assisting persons to contravene the Acts (ss. 8, 10).

Trustees.—The Trustee Act, 1898, No. 4, which is one of the series of consolidating Acts, repeals the former Trustee Acts, and (save certain enactments) Trust Property Acts, and re-enacts their provisions. Part I. deals with the powers and duties of trustees, executors, and administrators; Part II. with the powers of the court; Part III. with payment into court of trust funds; and Part IV. contains miscellaneous provisions. The Act is, in effect, a re-enactment of the provisions of the Imperial Trustee Acts, 1850, 13 & 14 Vict., No. 60, and 1852, 15 & 16 Vict., No. 55, and of Lord St. Leonard's Act, 1859, 22 & 23 Vict., No. 35, and Lord Cranworth's Act, 1860, 23 & 24 Vict., No. 145; and only a few of its provisions are copied directly from the Imperial Trustee Act, 1893—*e.g.* ss. 29 and 32 from ss. 26 and 29 of the Imperial Act respectively. The provisions of the Imperial Act of 1893 as to increasing or diminishing the number of trustees (s. 10 [2]), the powers to sell subject to depreciatory conditions (s. 14), and to authorise receipt of money by a banker or solicitor (s. 17), have not, for example, been adopted. The investments authorised for trustees are far more limited than those authorised by s. 1 of the Imperial Act, being restricted to the following:

(1) Any public funds or Government stock or Government securities.

(2) Real securities in any part of New South Wales.

(3) Any of the stocks, funds, or securities in or upon which by any

[1] This question was discussed in an article on "The Immigration of Coloured Races into British Colonies," in vol. ii. of the *Journal*, 1897, p. 336.

[2] See *Ibid.*, p. 351.

[3] See *Ibid.*, N. S., No. 1, p. 108.

general order cash under the control of the court may from time to time be invested (s. 4 [1]).

Audit.—The Audit Act, 1898, No. 5, repeals the Audit Act of 1870 and two amending Acts, and re-enacts their provisions. As under the original Act of 1870, when once moneys have been paid in to a bank keeping the public account, they can only be withdrawn by a formal instrument, signed by the Colonial Treasurer and counter-signed by the Auditor-General (s. 16); and the latter must first ascertain that the money is then legally available and applicable to the purpose mentioned in the instrument, which must then be submitted to the Governor for his approval and signature (s. 17). The Auditor-General, besides the important duty of examining the public accounts, has every month either to allow and discharge the Colonial Treasurer for all receipts and payments properly given and made (s. 35 [ii]), or to disallow and surcharge all sums not duly credited or authorised (s. 36); and also to examine and report fully to the Legislative Assembly upon the treasurer's annual statement (s. 43).[1]

Impounding.—The Impounding Act, 1898, No. 6, repeals and re-enacts the provisions of the Impounding Act of 1865 and five amending Acts, regulating the establishment of pounds, the duties of pound-keepers, the impounding and detention of animals, their sale, and the remedies of their owners.

Liens on Crops and Wool and Stock Mortgages.—The Liens on Crops and Wool and Stock Mortgages Act, 1898, No. 7, repeals and consolidates the provisions of some eight earlier Acts. The Act provides that any person making a *bonâ-fide* advance of money or goods to a holder of land on the security of the growing crops of agricultural or horticultural (*i.e.* fruit) produce under an agreement, duly registered within thirty days, shall have a preferable lien upon such crops, and be entitled to the produce (s. 4); and such lien shall not be affected by the lienor's death or bankruptcy, or by future sale or mortgage of the land (s. 5), but shall not continue in force for more than one year (s. 9). A preferable lien may in like manner be obtained on the next ensuing clip of wool (s. 11), and if the lienor neglect to shear and deliver the wool, the lienee may take possession of the sheep and shear them (s. 12). Mortgages of sheep, cattle, and horses must also be registered within thirty days (s. 13); and such mortgages and liens on wool are transferable by indorsement (s. 15). A penal clause is added for the punishment of frauds by lienors on wool and by mortgagers of stock, rendering them liable to fine and three years' imprisonment (s. 20).

Coroners.—The Coroners Act, 1898, No. 8, repeals and consolidates five earlier Acts. Adopting the provisions of the Act of 1861, 24 Vict., No. 10, it empowers coroners to hold inquests into the cause and origin of fires, whenever the coroner or the Fire Brigades Board consider

[1] In Victoria, under the Audit Acts, 1890, No. 1066, and 1893, No. 1323, the Commissioners of Audit have to discharge similar duties.

it a fit case for enquiry; and to commit for trial persons found guilty of arson (s. 12).

Banks and Bank Holidays.—The Banks and Bank Holidays Act, 1898, No. 9, consolidates the law relating to the periodical publication of the liabilities and assets of banks, to the registration of the proprietors' names, and to bank holidays. Every bank has to make up each week a full statement of assets and liabilities (s. 4), and to prepare every quarter an abstract of these weekly statements, and a statement showing—

(*a*) the amount of the capital stock of the bank preparing such abstract, paid up at the close of the quarter for which such abstract is prepared; and

(*b*) the rate and amount of the last dividend that was declared by such bank to its shareholders or proprietors; and

(*c*) the amount of the reserved profit of such bank at the time of declaring such dividend (s. 5).

This abstract and statement have to be verified by the oath of the manager, and delivered to the Colonial Secretary, to be laid before Parliament and published in the *Gazette* (s. 5). Ten days, including the day after Good Friday and the Prince of Wales' birthday,[1] are named as bank holidays (s. 14, and 4th Schedule).

Bills of Sale.—The Bills of Sale Act, 1898, No. 10, repeals and re-enacts the provisions of the Act of 1855, 19 Vict., No. 2, which adopted those of the Imperial Act of 1854, 17 & 18 Vict., No. 36. Registration must be effected within thirty days (s. 4), and renewed every twelve months (s. 5); and the goods comprised in a bill of sale duly registered are exempt from the order and disposition clause of the bankruptcy law (s. 8).

Evidence.—Three Acts of this year (Nos. 11, 12, and 30) deal with the law of evidence.

The Evidence Act, 1898, No. 11, which consolidates the statute law relating to evidence, clears the Statute Book of five entire Acts and of portions of some twenty other Acts. It re-enacts the earlier statute law respecting the competency and compellability of witnesses, and their examination and cross-examination, the means of proof and admissibility of certificates, public books and documents, Acts of State, judgments local and foreign, and other judicial proceedings, and entries in bankers' books, as well as many other matters. Proof of foreign law may be given in accordance with an enactment first introduced in 1891 by the Act 55 Vict., No. 5, s. 11, and founded on s. 426 of the Code of Procedure of the State of New York, which is now reproduced in the following terms:

S. 19: "(1) Evidence of any statute, code, or other written law of any part of the British dominions other than New South Wales, or of any foreign

[1] These two days are kept as bank holidays in the seven Australasian Colonies, except that in Victoria November 23rd, and not the 9th, is a holiday, and in South Australia Easter Eve is not a holiday.

State, may be given by the production of a printed copy in a volume of such statute, code, or law, either—

"(*a*) purporting to be published by the authority of the Government of such part of the said dominions, or of such State; or

"(*b*) proved to the satisfaction of the court to be commonly admitted as evidence in the courts and judicial tribunals of such part of the said dominions, or of such State.

"(2) Evidence of the unwritten or common law of any such part of the said dominions, or any such State, may be given by the production of a book of reports of cases adjudged in the courts thereof, purporting or proved to the satisfaction of the court to be authorised reports."

The Evidence (Penalties) Act, 1898, No. 12, is merely a temporary Act preserving certain repealed enactments for the purpose of construing certain unrepealed enactments pending further consolidation.

The Accused Persons Evidence Act, 1898, No. 30, effects an alteration in the law respecting procedure in criminal trials by enacting that: "It shall not be lawful to comment at the trial of any person upon the fact that he has refrained from giving evidence on oath on his own behalf."[1]

Wills, Probate, and Administration.—The Wills, Probate, and Administration Act, 1898, No. 13, repeals various enactments relating to these matters, including the whole of the Imperial Wills Act of 1837 (adopted in the colony in 1839 by 3 Vict., No. 5), and the New South Wales Probate Acts of 1890 and 1893, and consolidates their provisions. Part I. deals with wills, and re-enacts all the provisions of the Wills Act except a few which are inapplicable to the circumstances of the colony. Part II. deals with probate and administration, and re-enacts the law introduced in 1890 that upon the grant of probate or administration the real as well as personal estate of the deceased shall as from his death vest in the executor or administrator (s. 44).

Pastures and Stock Protection.—The Pastures and Stock Protection Act, 1898, No. 14, consolidates two earlier Acts of 1880 and 1881 passed for the purpose of protecting pastures and live-stock from the depredations of noxious animals. The Act casts upon every owner of land—except in a district specially exempted (s. 5, [2])—the onerous duty "to make effective provision for, and to ensure the destruction of, all noxious animals at large in wild state upon such land," and if he fail to perform such duty for twenty-eight days after notice is served on him, he becomes liable to a penalty

[1] Similar enactments prohibiting such comment have been made in Victoria by the Crimes Act, 1891, No. 1231, s. 34 (3); in Canada by the Evidence Act, 1893, No. 31, s. 4 (2); and in New Zealand by the Criminal Code Act, 1893, No. 56, s. 400. These enactments will be found collected in the Appendix to Butterworth's Criminal Evidence Act, 1898 (English), at pp. 105-6, 93 and 98, where the expediency of such a provision, and the contrast between these enactments and the enactment in the English Criminal Evidence Act, 1898, s. 1 (*b*), prohibiting such comment by the *prosecution*, is discussed (*ib.*, pp. 17, *et seq.*).

not exceeding £50 (s. 10). The expression "noxious animals" includes marsupials and native dogs (s. 3).

Commons.—The Commons Regulation Act, 1898, No. 15, consolidates the law relating to this subject, and provides for the appointment by the Governor of first, and the election by the commoners of new, trustees of commons, for the keeping of a roll of the persons entitled to the use of the common, for meetings of the commoners and defining their rights.

Public Hospitals.—The Public Hospitals Act, 1898, No. 16, consolidates the provisions of three earlier Acts, and deals with the election and appointment of officers, and with hospital property and legal proceedings. The 2nd Schedule shows that the Act already applies to seventy-three hospitals throughout the colony.

Conveyancing and Real Property.—The Conveyancing and Law of Property Act, 1898, No. 17, is an important Act of one hundred and twenty sections, consolidating the statutes relating to conveyances, assignments, mortgages, settled estates, and titles to land. It is divided into eight parts (ss. 1 and 2 being preliminary), as follows: Part I., Titles to Crown grants (ss. 3-15). Part II., Claims to grants of land (ss. 16-25). Part III., The conveyance and assignment of property (ss. 26-36). Part IV., Leases and sales of settled estates and estates of infants (ss. 37-81). Part V., Renewable leaseholds of persons under disability and persons out of the jurisdiction (ss. 82-90). Part VI., Mortgages: (*a*) Implied powers of mortgagees (ss. 91-104); (*b*) Discharge and reconveyance (ss. 105-8); (*c*) Mortgaged lands of deceased persons (s. 109); (*d*) The title of mortgagors (s. 110). Part VII., Covenants to insure (ss. 111-16). Part VIII., Miscellaneous provisions (ss. 117-20). Part III. contains full provisions as to the acknowledgment of deeds, whether by married women or by others, in lieu of a fine or recovery (ss. 26-8), thus reproducing the enactment made in 1843 by 7 Vict., No. 16, s. 16, whereby a deed duly executed and acknowledged in the manner prescribed was as valid and effectual to pass all the estate and interest of the parties as if a fine with proclamations had been levied or a common recovery suffered (s. 26).[1] Provisions similar to those of the (Imperial) Voluntary Conveyances Act, 1893, first enacted in the colony in 1891, 55 Vict., No. 8, are also reproduced (s. 29). Part IV. empowers the court to authorise leases or sales of the whole or parts of settled estates, but gives in general more restricted powers than those given by the (Imperial) Settled Estates Act of 1877, of which it is an adaptation. It confers no such wide powers of lease or sale to the tenant for life as are given by the (Imperial) Settled Land Act, 1882. A lease by a tenant for life without leave of the court must be for a term not

[1] As fines and recoveries could not be conveniently used in the colony, a proclamation by the Governor of March 6th, 1819, had made certain regulations for barring a married woman's right to dower, and this proclamation was confirmed by the Act of 1843, s. 16, above referred to.

exceeding ten years (s. 68 [1]). The powers conferred on the court by Part IV. may, however, be exercised, notwithstanding any express declaration to the contrary in the settlement, and any provision therein attempting to prevent a person applying to the court to exercise such powers shall be *pro tanto* void (s. 77).[1] The first fourteen sections of Part VI. relating to the implied powers of mortgagees are taken from Lord Cranworth's Act, 1860, 23 & 24 Vict., No. 145, ss. 11-24. A reconveyance for re-vesting the estate in land (not subject to the Real Property Act[2]), in the mortgagor is rendered unnecessary when an acknowledgment of satisfaction, duly signed and indorsed on the mortgage, is registered with the Registrar-General, Such acknowledgment discharges the mortgage and vests the estate in the person for the time being entitled to the equity of redemption, or, if there is a subsequent subsisting mortgage, vests the legal estate in the person in whom that subsequent mortgage is vested, or, if more than one such mortgage, then in the person who has the prior right to call for an assurance of such legal estate (s. 105).[3] Provision is also made to facilitate redemption in case the mortgagee is out of the jurisdiction, cannot be found, or is unknown (s. 108).

Licensing.—The Liquor Act, 1898, No. 18, repeals three Licensing Acts, and consolidates the law relating to publicans and others engaged in the sale of "liquor," which includes "any spirituous or fermented fluid whatever capable of producing intoxication" (s. 3). The Act provides for licensing districts and courts; for brewers', spirit merchants', publicans', and other licenses; for inspectors, and for the cancellation of licenses and disqualification of licensees. The Governor appoints a licensing court for every licensing district, the metropolitan court, consisting of seven members, being such of the metropolitan police or stipendiary magistrates or other persons as the Governor may appoint, and the senior police magistrate is chairman (s. 5). In other districts the court consists of three members, being the appointed members and the police magistrate as chairman (*ibid.*). No portion of licensed premises, or of the building of which the same forms part, may be used as a retail store (s. 9 [4]). Wine, cider, or perry, in quantities of not less than two gallons, the produce of fruit grown within the colony, and made by the seller, and not consumed on the premises, are exempt from the provisions of publicans' and certain other licenses (s. 13 [1]). The granting of a new

[1] In this respect Part IV. differs from the (Imperial) Settled Estates Act, 1877, which provides that "no such powers shall be exercised if an express declaration that they shall not be exercised is contained in the settlement" (s. 38).

[2] As to land subject to that Act, see footnote 1, *infra*.

[3] A series of enactments have been made in order to effect this change in the law—*viz.* the Trustee Act, 1852, 16 Vict., No. 19, s. 52; a short Amendment Act of 1886, 50 Vict., No. 5, which it was found necessary to repeal by the Mortgages Release Act of 1893, 57 Vict., No 4, which made the enactment in the form which is now consolidated in the present Act. An enactment in the Real Property Act of 1862, 26 Vict., No. 9, s. 61, provides for the discharge by indorsement duly registered of mortgages and incumbrances upon land brought under that Act.

publican's license, or of a certificate of removal of a publican's license within any municipality, shall be contingent upon the vote of the ratepayers, such vote to be taken once in three years; and if the number of votes in the negative equals or exceeds eleven-twentieths of the number of votes polled, the ratepayers' option shall be held to have been exercised in the negative, but otherwise in the affirmative (s. 28). A negative vote, however, will not prevent the court from granting such license for a hotel of a specified size, nor an affirmative vote make it compulsory on the court to grant a new license (s. 29). Publicans are liable to a penalty of £10 for supplying any aboriginal native of Australia of any age, or any person apparently under the age of sixteen, with liquor for consumption on the premises (s. 48); and two justices may forbid all licensed persons, under a like penalty, to supply with liquor, for the space of one year, an "inebriate"—*i.e.* a person who "by the excessive drinking of liquor has so wasted his means, or is likely to impoverish himself to such a degree, as to expose himself or his family to want, or seriously impair his health" (s. 52).

Weights and Measures.—The Weights and Measures Act, 1898, No. 19, consolidates the law, declaring the weights and measures deposited in the Treasury (of which a list is contained in the 2nd Schedule) to be standard; providing for lost standards to be replaced, and models to be made and duly stamped; for inspection, for the sale of goods by weight or measure, and for the procedure against offenders.

Aliens.—The Naturalisation and Denisation Act of New South Wales, 1898, No. 21, is a consolidating Act, which declares the rights and disabilities of aliens, and empowers the Governor to grant a certificate of naturalisation to an alien who has resided for at least five years, and intends to reside, in the colony, or in certain cases to grant letters of denisation to a foreign officer or person. Real and personal property may be freely acquired, held, and disposed of by an alien (s. 4). The provisions as to the rights and disabilities of aliens, the effect of a certificate of naturalisation, and the status of married women and children are similar to those of the Imperial Naturalisation Act, 1870.

Legal Practitioners.—The Legal Practitioners Act, 1898, No. 22, repeals seven earlier statutes, and consolidates their enactments It is divided into six parts, as follows: Part I., Preliminary (ss. 1-3). Part II., Barristers (ss. 4-12). Part III., Solicitors (ss. 13-15). Part IV., Conveyancers (ss. 16-20). Part V., Bills of Costs (ss. 21-39). Part VI., Unqualified Practitioners (s. 40). Part II. provides that the Judges of the Supreme Court, the Attorney-General, and two barristers annually elected by the practising barristers shall form a board for the approval of properly qualified persons to be barristers (s. 4). The board shall promulgate rules for the examination of candidates for admission as barristers (s. 6), and may appoint examiners (s. 7). A solicitor of five years' standing from the date of his admission in the colony is entitled to have his name removed from the roll of solicitors and be admitted without

examination to the bar (s. 11); and, conversely, barristers of similar standing may become solicitors (s. 14). The Act makes no provision for the examination of articled clerks, this subject and the admission of solicitors generally being regulated by rules made by the Supreme Court. The anomalous state of things introduced in 1892 is retained, whereby barristers are still limited by custom to discharge the functions of barristers, whereas every solicitor is competent to appear, and has the right of audience in all courts in New South Wales in all matters and proceedings in which he acts as solicitor (s. 15).[1] Part V. provides for the delivery of a signed bill before a solicitor can sue for fees, and for the taxation of bills. The Act adopts the term "solicitor" to express an "attorney, solicitor, and proctor of the Supreme Court," in place of "attorney," a term which has long survived in the colony after its disuse in England.

Newspapers.—The Newspapers Act, 1898, No. 23, repeals five earlier Acts, and consolidates the law relating to the printing and publishing of newspapers and papers of a like nature, the main object of the Act being to prevent the mischiefs arising from the printing and publishing of newspapers by unknown persons.

Auctioneers.—The Auctioneers' Licensing Act, 1898, No. 24, repeals and consolidates earlier Acts, making provision for auctioneers' licenses and prohibiting public sales without such license.

Bankruptcy.—The Bankruptcy Act, 1898, No. 25, is an important Act of one hundred and fifty-six sections and five schedules consolidating the bankruptcy law. It follows the lines and adopts most of the provisions of the Imperial Act of 1883, 46 & 47 Vict., No. 52, but is not absolutely identical with that Act. It preserves, for instance, certain variations of a highly technical nature, which have produced quite a wealth of Colonial case law. It does not, like the English Act, enact that a "fraudulent conveyance" shall be an Act of bankruptcy, but a conveyance by a debtor "with intent to defeat or delay his creditors or any of them" (s. 4 [*b*]). So while by the English law a certain preference is to be "deemed fraudulent and void," preference in certain cases in New South Wales is declared void "whether fraudulent or not" (s. 56). The cases show the extreme refinements to which such variations lead.

Medical Practitioners.—The Medical Practitioners Act, 1898, No. 26, consolidates the statute law relating to the qualifications of medical witnesses

[1] New South Wales is the only Australasian colony in which a distinction is still drawn by law between barristers and solicitors, the Legislature not having conferred on barristers the right to practise as solicitors; but in Victoria and Queensland the same distinction is preserved by custom. In Queensland the Legal Practitioners Act, 1881, and in Victoria the Legal Profession Practice Act, 1891, attempted to amalgamate the two branches of the profession, but members of the Bar do not in fact practise as solicitors. In South and in Western Australia, and in New Zealand, the two branches are in fact amalgamated, as also in Tasmania, where, however, a few lawyers generally practise as barristers only.

at coroners' inquests and at certain magisterial enquiries, and to the registration of legally qualified medical practitioners.

Stamp Duties.—The Stamp Duties Act, 1898, No. 27, consolidates the provisions of six repealed Acts, and deals with duties on deeds and instruments and on estates of deceased persons. The estate duties are as follows: Part I., On the probate or letters of administration to be granted in respect of any estate real and personal of deceased persons:

Where the value of such estate is under £5000	...	1 per cent.
Where the value is £5000 and under £12,500	...	2 „
Where the value is £12,500 and under £25,000	...	3 „
Where the value is £25,000 and under £50,000	...	4 „
Where the value is £50,000 and over that amount	...	5 „

Part II., Settlement of property taking effect after death of settler: same duties as under Part I.

Statute Law Revision.—The Statute Law Revision Act, 1898, No. 28, removes some six hundred obsolete statutes from the Statute Book.

Income Tax.—The Land and Income Tax (Declaratory) Act, 1898, No. 37, is an Act passed to amend the Land and Income Tax Assessment Act of 1895, No. 15, and to over-ride (with the exception of a few decided or pending cases) certain judicial decisions adverse to the Commissioners of Taxation. The Supreme Court had decided that under the Act of 1895, which provided that a taxpayer was entitled to deduct from the taxable amount the expenses actually incurred "in the production of his income" (s. 28 [1]), he was entitled to deduct expenses incurred in the production of his total income, and not merely in the production of the taxable amount of his income,[1] and the Privy Council had affirmed this decision.[2] The Supreme Court had also decided that the profits derived by the proprietor, living in England, of certain meat-preserving works in New South Wales, where the meat was preserved, tinned, and shipped to England, in which country the tins were labelled, packed, and sold, were not income accruing from a trade carried on in New South Wales, nor income accruing from a source in New South Wales under the Act of 1895, s. 15, (1), (4), but were exempt as "income earned outside the colony" (s. 27, [3]).[3] The Supreme Court had also held that a mining company, registered in Victoria, holding lands under lease from the Crown in New South Wales, where it carried on mining operations and treated the ore, the products of which were then exported to Victoria, and sold there or in London, and the profits received in Victoria or in London, was not liable to pay income tax in New South Wales, as the income was "earned outside the colony."[4] The present Act

[1] *Re Teece* [1897], 18 N. S. W. L. R. 372.
[2] *Commissioners of Taxation* v. *Teece* [1899], A. C. 254.
[3] *Re Tindal* [1897], 18 N. S. W. L. R. 378.
[4] *Commissioners of Taxation* v. *Broken Hill Proprietary Block* 10 *Co.* [1898], 19 N. S. W. L. R. 301.

of 1898 has been passed with the object of altering this law, and rendering the income in such cases liable to taxation retrospectively (except as to cases then pending) as well as in the future.

Crown Lands.—The Crown Lands Act, 1898, No. 38, is a short Act dealing with the valuation and appraisement of improvements of Crown lands.

Distress for Rent.—The Distress for Rent Restriction Act, 1898, No. 43, protects a sewing-machine, typewriting-machine, or mangle, the property of, or under hire to, any woman, from distress for rent in respect of the premises where the machine or mangle is; but one woman is not entitled to have more than one sewing-machine, one typewriting-machine, or one mangle protected under the Act.

Dogs and Goats.—The Dog and Goat Act, 1898, No. 44, provides for the registration of dogs, and contains many regulations respecting them. If a dog upon a highway rushes at or attacks a person, horse, or bullock, whereby the life or limbs of any person are endangered or property injured, the owner is liable to a penalty of from 20*s.* to £5 beyond the damage (s. 13), and the owner is liable for any injury done by his dog without any proof of a previous mischievous propensity (s. 19); while any dog when not on his owner's premises attacking any person or animal may be destroyed (s. 20). Neither dogs nor goats may be used for the purposes of draught (s. 23).

Lunacy.—The Lunacy Act of 1898, No. 45, is an important Act of one hundred and eighty sections and nineteen schedules, repealing four earlier Acts and consolidating the law respecting the insane. It is divided into ten parts as follows: Part I., Proceedings by which persons of unsound mind may be (1) placed under restraint; (2) removed to and from an adjacent colony and be treated therein (ss. 4-24). Part II., Hospitals for the insane (ss. 25-30). Part III., Licensed houses (ss. 31-51): (1) for the reception of the insane; (2) for the reception of a single patient. Part IV., Reception houses for the temporary treatment of the insane (ss. 52-8). Part V., Hospitals for the criminal insane (ss. 59-76). Part VI., Inspection, transfer, and discharge of patients (ss. 77-100). Part VII., Proceedings for declaring persons insane or incapable and for the appointment of committees, etc. (ss. 101-14). Part VIII., Administration and management of the estates of insane persons and patients, including the powers and duties of the Master in Lunacy (ss. 115-67). Part IX., Court visitor (s. 168), Part X., Miscellaneous provisions (ss. 169-80).

Seamen.—Two Acts relate to seamen: the Seamen's Act, No. 46, and the Foreign Seamen's Act, No. 47.

The Seamen's Act, 1898, No. 46, repeals five Acts and portions of four other Acts, and consolidates their provisions. It is divided into eleven parts dealing with the following matters: Part I., Preliminary (ss. 1-5). Part II., Shipping offices and masters (ss. 6-12). Part III., Apprenticeship (ss. 13-16). Part IV., Engagement of seamen: (1) Generally (ss. 17-30);

(2) Islanders (ss. 31-4). Part V., Discharges (ss. 35-9). Part VI., Wages: (1) Accrual and payment (ss. 40-8); (2) Forfeiture (ss. 49-52); (3) Allotment notes (ss. 53, 54); (4) Remedies (ss. 55-7). Part VII., Property of deceased seamen (ss. 58-68). Part VIII., Protection (ss. 69-80). Part IX., Discipline (ss. 81-91). Part X., Vessels in port: (1) Duties of masters (ss. 92-100); (2) Offences by seamen and other persons (ss. 101-4); (3) Powers of justices and constables (s. 105); (4) Procedure (ss. 106-11). Part XI., Miscellaneous matters (ss. 112-19).

The Foreign Seamen's Act, 1898, No. 47, repeals and re-enacts an Act passed in 1852 (16 Vict., No. 25) for more effectually preventing desertion and other misconduct of seamen belonging to foreign ships; and provides for proceedings being taken in a summary way before justices.

7. NEW ZEALAND.

[*Contributed by* EDWARD MANSON, ESQ.]

The Acts passed during the year 1898 were in all 70, of which 42 were Public Acts, 26 Local and Personal Acts, and 2 Private Acts.

Unclaimed Moneys (No. 4).—The Unclaimed Moneys Act, 1898, is designed to give publicity to information relating to "unclaimed moneys," meaning by that expression all principal and interest money, and all unforfeited dividends, bonuses, profits, and sums of money owing to any person, in the possession of any company for a period of six years after the same have become payable. The machinery employed is to require the company to enter the unclaimed money in an alphabetical register, in a form scheduled to the Act, which is to be open to public inspection for a fee of two shillings. A copy of the register is also to be published annually in the *New Zealand Government Gazette*, and notice posted to the persons listed, at their last-known place of residence (s. 4). If unclaimed for two years after publication in the *Gazette*, the moneys are to be paid to the credit of the Colonial Treasurer (s. 6). The Treasurer may require production by the company of any books referring to such moneys (s. 7).

The First Offenders' Probation Act (No. 5).—This amends the principal Act of 1886 by requiring the probation officer, where he does not recommend placing the offender under probation, to state fully and in writing the grounds of his refusal.

Institutions for Inebriates (No. 8).—The Inebriates' Institutions Act, 1898, empowers the Governor in Council to establish institutions for inebriates —an inebriate being defined as a person who is, "by reason of the habitual use in excess of intoxicating liquor or drugs, at times dangerous to himself or to others, or incapable of managing himself and his affairs."

Inebriates may themselves apply for admission (s. 6), or a husband or

wife or relation or friend may do so (s. 7). The application is to any judge of the supreme or district courts, or a stipendiary magistrate. Any stipendiary magistrate may also, upon proof made to him that any person is addicted to the habitual use in excess of intoxicating liquor or drugs, summon such person to appear before him on a day named, or if such person be present on the occasion when such proof is made, thereupon call upon him to show cause why he should not be committed to an institution for inebriates (s. 9). Patients wilfully refusing to conform to the regulations of the institution are liable to a penalty.

Bank of New Zealand (No. 9).—This Act reorganises the constitution of the Bank of New Zealand in accordance with the report of a committee of the House of Representatives.

Borough Franchise (No. 10).—This Act entitles to enrolment on the burgess list, in addition to the burgesses under the principal Act of a borough, every person possessing within the borough certain freehold or residential qualifications.

Native Land Laws (No. 11.)—The object of this Act is to resolve doubts which had arisen as to the payment of stamp duty on conveyances of native land by way of trust under s. 3 of the principal Act. Duty is to be payable on a conveyance to any person other than a native.

Water Supply (No. 12).—The machinery of the Water Supply Act, 1891, is amended in several particulars—*e.g.* as to water-race districts, the control and management of water-races, and the hypothecation of debentures.

Old Age Pensions (No. 14).—Old age pensions, which is still a thorny problem for English politicians and economists, seem already to have received a solution in New Zealand. S. 7 of the Act begins by declaring that "subject to the provisions of this Act every person of the full age of sixty-five years or upwards shall, whilst in the colony, be entitled to a pension," the amount of which is to be £18 a year (s. 9); but this right is qualified by a number of conditions (s. 8 [1] to [10]). The claimant must be residing in the colony at the date of his claim, and must have so resided continuously for not less than twenty-five years immediately preceding such date, must not for the past preceding twelve years have been imprisoned, must not have deserted his wife or neglected to maintain his children, must be of good moral character, having led for the five past years a sober and reputable life, and finally, must not have an income of more than £52. For the purposes of the scheme the colony is divided into districts, each district having a deputy-registrar working under a registrar for the general administration of the Act. A claimant must lodge his pension claim with the district registrar, verified by a statutory declaration (s. 15), which must be corroborated, and it is then investigated in open court by a stipendiary magistrate of the district (s. 18), who can take evidence (s. 19), and may either admit, reject, or adjourn it. No pension claim is to be admitted unless the evidence of the claimant is corroborated on all material

points (s. 20). If admitted, the deputy-registrar issues a "pension-certificate." The pension is payable in monthly instalments at the post-office money-order office named in the pension certificate (s. 36). Drunkenness on the part of the pensioner, or any offence punishable with a month's imprisonment, may be a ground for the convicting court forfeiting future instalments of the pension, or, if the pensioner is a habitual drunkard, cancelling the pension-certificate (s. 49).

The funds are to be provided by the Colonial Treasurer paying whatever is necessary to meet the instalments of pension out of the consolidated fund into the post-office account (s. 58).

By s. 62 the Colonial Treasurer is to lay before Parliament each year a statement of the number of pensioners and the amount paid under the Act.

Shearers' Accommodation (No. 15).—The wool exported from the colony in 1897 was of the value of £4,443,144. This gives some idea of the sheep-shearing industry. The above Act deals with the providing of proper accommodation for the shearers; that is to say, all employés in or about shearing-sheds. Inspectors are to be appointed and to visit all shearing-sheds not later than March 31st, and to report to the Minister of Labour. Two hundred and forty cubic feet of space for each shearer is the minimum. If the accommodation is inadequate, a stipendiary magistrate may order better to be provided. Separate sleeping accommodation is to be provided for Chinese employés.

Slander: Imputation of Unchastity (No. 16).—The old common-law doctrine of England, the growth of a rude state of society, allowed a license of speech which is repugnant to modern taste. Words imputing unchastity to women were not actionable without proof of special damage. This anomaly was abolished in England by the Act of 1896. The colony has now passed a similar Act, providing that words spoken and published after the passing of the Act which impute unchastity or adultery to any woman or girl, shall not require special damage to render them actionable.

Government Loans to Local Bodies (No. 18).—This Act amends the principal Act of 1886, and sanctions loans to local authorities for purposes of irrigation, water supply, or water conservation; but limits the total amount of all loans to any one local authority in any financial year to £100,000.

Inspection of Dairies (No. 22).—The growth of the dairy produce trade in the colony is discernible in this Act, which regulates very minutely the inspection of dairies, and the manufacture, inspection, sale, and export of dairy produce, and also authorises Government advances to dairy companies. S. 6 provides for the appointment of inspectors and analysts, who may at all reasonable times enter and inspect any dairy, stock, or utensils, and take samples (s. 8), and if he finds any want of cleanliness or any disease, he may require the defects to be remedied and order the

diseased stock to be kept separate (s. 12). There are special provisions as to not keeping pigs, manure-heaps, cesspools, or fowl-houses in proximity to a dairy (ss. 15, 16).

Dairy produce is not to be sold if infected, or unless marked with the true weight (s. 18); nor to be adulterated (s. 19). Milk in particular is not to be stored in a room used for domestic purposes.

Export of Dairy Produce.—The Governor may by order in council appoint particular ports for export and buildings for storage (s. 25); and no dairy produce is to be shipped unless in good condition and free from disease.

Penalties.—S. 27 prescribes penalties for offences against the Act.

Regulations.—By Order in Council regulations may be made for registration of dairies, of marks and brands, for sterilisation of dairy produce, preventing pollution of water, etc. (s. 28).

Government Loans.—SS. 30 and 31 authorise advances by Government to dairy companies for acquisition of land, buildings, or plant (s. 32); but such advances are not to exceed in one year £30,000 (s. 31). The amount of any particular loan is in no case to exceed £2000, and is to be repayable in instalments extending over not more than fifteen years.

Kauri-Gum Industry (No. 23).—Kauri gum is a resinous gum which exudes from the Kauri pine. The object of the present Act is to organise the industry, and it does so by dividing the north island of the colony into Kauri-gum districts, creating Kauri-gum reserves, and authorising the local authorities of the district to issue Kauri-gum-digging licenses. The fee for a license is five shillings.

Pharmacy (No. 25).—This Act constitutes the Pharmaceutical Society of New Zealand, managed by the Pharmacy Board of New Zealand, consisting of ten members. The board is to keep a register of all persons duly qualified as pharmaceutical chemists (s. 20), and each chemist so registered is to be entitled to a certificate (s. 21). SS. 27 and 30 define the qualifications for registration, including any one who holds a certificate or diploma of competency as a pharmaceutical chemist or as a chemist and druggist from the Pharmaceutical Society of Great Britain or of Ireland.

Enrolled Managers.—A friendly society or a company or the proprietor of a shop may carry on a pharmaceutical business by an "enrolled manager," provided he is a registered chemist (s. 32). A roll of such managers is to be kept (s. 33).

Carrier Pigeons (No. 26).—This Act imposes a penalty on any person intentionally or negligently shooting or injuring any homing pigeon, but only if the owner has registered such pigeons with the chief postmaster of the district (s. 4). The effect of registration is to place the pigeons at the disposal of the Government of the colony when the exigencies of the public service require it.

Mining (No. 27).—This Act exempts companies, whose business in New

Zealand is confined exclusively to mining operations, from duty under the Stamp Act, 1882.

Rabbits and Wire-Netting (No. 29).—This is an attempt to deal with the rabbit nuisance. The scheme of the Act is to create districts, each with a board of trustees, who are empowered (s. 14) to do all such things as it thinks to insure the destruction of rabbits—*e.g.* by offering rewards for their destruction and paying for the erection of rabbit-proof fences. The erection of such rabbit-proof wire-netting is by s. 23 made a public work, for which loans may be made by the Government.

Drainage of Agricultural and Pastoral Land (No. 30).—This Act is to extend to local authorities the powers as to draining and removal of weeds conferred by the Land Drainage Amendment Act, 1894.

Diseased Stock: Compensation for Slaughter (No. 31).—This Act provides for compensation in cases where an inspector condemns any stock to be destroyed as diseased (s. 2). The compensation is to be based on the fair market value of the animal (s. 3). The Act also provides for the appointing of a special inspector of slaughter-houses (s. 12).

Solicitors (No. 34).—By this Act a solicitor of the Supreme Court of the colony is to be entitled to be admitted and enrolled and to practise as a barrister on application to a judge, if the judge is satisfied that the applicant is of good character, and has for at least five years continuously next preceding the date of application been in active practice as a solicitor or as a managing clerk to a solicitor, and has himself been a solicitor during such period.

Juries (No. 35).—

Exemptions.—The law relating to juries was very fully defined by the Juries Act, 1880. Further experience has shown the necessity of revising the list of exemptions by adding to it engineers in charge of districts, station-masters, signalmen, and other railway officials and shop managers (s. 5). Power is also given to the sheriff to amend the jury list of his own knowledge (s. 6).

Challenge by Crown.—On the trial of all criminal cases and of all civil cases to which the Queen is a party there is to be the same right of challenge on behalf of the Queen as any prisoner or party now by law possesses (s. 10).

Maori Jury.—In criminal cases of Maori against Maori the alleged offender may claim to be tried by a Maori jury.

Juries Disagreeing.—Where jurors cannot agree the judge is now empowered to discharge them, after waiting "such periods as the judge thinks reasonable, being not less than four hours."

Mining (No. 38).—This is a very elaborate Act, consolidating and amending the law relating to mining other than coal-mining. The Act is divided into ten parts: Part I., Preliminary. Part II., Districts and appointments. Part III., Lands subject to the Act and lands exempted.

Part IV., Mining privileges. Part V., Working, regulation, and inspection of mines. Part VI., Registration of appliances and processes for treating ores. Part VII., Compensation. Part VIII., Mining partnerships. Part IX., Administration of justice. Part X., Miscellaneous provisions.

Mining Districts.—By Part II. the Governor may by proclamation constitute any portion of the colony a mining district presided over by a warden's court, including a staff of mining registrars, receivers of gold revenue, clerks, bailiffs, etc. (ss. 10-12). No officer of the Crown is to have any pecuniary interest whatever in any mining privilege in his district (s. 16).

Lands.—By Part III. all Crown lands within any mining district are declared open for mining (s. 18). The Governor may by notice in the *Gazette* set apart any Crown lands for mining or may exempt them (s. 20). A native land court may declare native land open for prospecting or ceded for mining purposes. Leases of unalienated Crown lands may be granted by the warden with the approval of the Minister of Lands.

Miners' Rights.—By Part IV. a document called "a miner's right" may be issued to any person at a fee of 20*s.* or 10*s.*, according as the land is native or not, entitling him to prospect for gold or any other mineral, to take one ordinary alluvial claim, to sue in the Warden's Court, etc. Prospecting is regulated by ss. 66-74, claims by ss. 75-89, water-races and other water privileges by ss. 91-116.

Regulation of Mines.—Part V. provides for a board to conduct the examination of applicants for certificates as mine managers or balking superintendents; for the drainage of mines (ss. 200-5), for the safety of life and property therein (ss. 206-7), as to plans and inspection of mines (ss. 207-13 and 220-2), and as to accidents (ss. 214-19).

Registration of Appliances.—Part VI. provides for registration of machines for "treating" ore, and for returns of all ore and metals treated.

Compensation.—Part VII. deals with compensation for the value of improvements, the taking of land, the injury to land or to riparian rights.

Mining Partnerships.—These do not include companies. Whenever two or more persons acquire any mining privilege, or engage in lawfully using or working it, or jointly employ others to do so for them, a mining partnership is to be deemed to exist between such persons whether there is or is not any express agreement to become partners.

Administration of Justice.—Part IX. deals with the Warden's Court, defines its jurisdiction, and prescribes the mode of procedure.

Miscellaneous Provisions.—Part X. is principally devoted to specifying the purposes for which the Governor may make regulations.

Crown Lands (No. 39).—This Act makes provision for the exchange, sale, reservation, and other disposition of certain Crown lands, reserves, and endowments, and for the investigation and settlement of certain matters relating to native and other lands.

Industrial Arbitration (No. 40).—The Industrial Conciliation and

Arbitration Act, 1894, was designed to encourage the formation of industrial unions and associations, and to facilitate the settlement of industrial disputes by conciliation and arbitration; and it created for this purpose a court of arbitration consisting of three members. It is somewhat significant that the present Act amends the principal Act by striking out from its title the words "to encourage the formation of industrial unions and associations." The other amendments relate chiefly to enforcing awards (s. 8) and industrial agreements (s. 9), and to securing that industrial disputes shall not be referred to the Board of Arbitration except in pursuance of a resolution of a majority of the union (s. 5). Jurisdiction is also given to the court to deal summarily with offences against the principal Act.

Divorce (No. 42).—

Grounds for Dissolution.—This Act introduces some striking innovations into the law. A spouse domiciled for two years in the colony may obtain a dissolution of the marriage on the ground of the respondent's (*a*) adultery; (*b*) wilful desertion without just cause; (*c*) four years' habitual drunkenness, and (if a husband) neglect or cruelty to his wife, (if a wife) neglect of her domestic duties; (*d*) conviction and sentence to seven years' imprisonment or penal servitude for attempting to take the life of the petitioner. If the petitioner's own habits or conduct have contributed to the wrong, the court may dismiss the petition.

Domicil.—A deserted wife domiciled in the colony at the time of the desertion shall be deemed to have retained her domicil (s. 3).

The Attorney-General or Solicitor-General may oppose a petition (s. 6).

Intervention for Collusion.—The decree is in the first instance to be a *decree nisi* only, and not to be made absolute for three months, during which time the Attorney-General or Solicitor-General may intervene for collusion (s. 7).

Alimony.—On a decree for dissolution the court if a husband has no property on which the payment of any gross or annual sum can be secured to the wife, make an order for payment to the wife of such monthly or weekly sums for her maintenance as the court may think reasonable.

Right to Marry Again.—In cases where there is no right of appeal, the parties respectively are to be at liberty to marry again at any time after the pronouncing or issue of the decree absolute (s. 10).

Fraudulent Deeds.—Any fraudulent deeds or conveyances designed to defeat a petitioner's claim to damages, alimony, costs, etc., may be set aside by the court (s. 13).

A sale of land to defeat a petitioner may be restrained (s. 14).

Restitution of Conjugal Rights.—No decree for this purpose is hereafter to be enforced by attachment, but the court may in lieu of attachment make an order for periodical payments (s. 15).

No compliance with a decree is to be deemed desertion (s. 17).

Custody of Children.—The court may before or after final decree make

any order as to this, which it might have made by interim orders during the pendency of a trial for judicial separation between the same parties.

Hearing "in Camerâ."—Any suit or proceeding may in the court's discretion be heard in chambers. The court may also, whether the proceedings are in court or chambers, prohibit publication of any report of the evidence (s. 22).

Judicial Separation: Feme-Sole.—After decree for a judicial separation a wife is to be considered a *feme-sole* (s. 26).

8. BRITISH NEW GUINEA.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—13.

In dealing with this possession it seems proper to include certain proclamations and sub-statutory regulations which do not emanate directly from the Legislature, but are of considerable general interest or importance.

Foreign Enlistment.—By proclamation gazetted April 30th, 1898, the Foreign Enlistment Act, 1870, 33 & 34 Vict., No. 90, was proclaimed in the colony.[1]

Coinage.—A proclamation gazetted July 30th, 1898, promulgated in the colony an Imperial Order in Council of February 3rd, 1898,[2] applying the Imperial Coinage Act, 1870, and the Coinage Act, 1891, with modifications, to British Guinea and other colonies. The modifications preserve the right to make legal tender, to an unlimited amount in silver, or of foreign coins where the local law on July 30th, 1898, gave such right.

Pandery.[3]—Regulation No. 2 of 1897, made by the Native Regulation Board, and assented to by the Lieutenant-Governor in Council, November 23rd, 1897, and gazetted March 19th, 1898, provides (Art. 2), any person that (*sic*) does anything with the object of inducing or compelling any female native to have sexual intercourse with a male person that (*sic*) is not her husband is guilty of a forbidden act and of wronging a native. Art. 3 forbids any person possessing authority over a female native to accept any gift or benefit for allowing or not forbidding her to have sexual intercourse with a male person not her husband.

Education.—Regulation No. 3 of 1897 (made by the same authority) compels school attendance three days a week by children over five and under thirteen at a school selected by the European magistrate of a district, with the written consent of the European missionaries under whose charge

[1] See s. 3 of that Act. As to proof of such proclamations, see *R.* v. *Jameson* [1896], 2 Q. B. 425.

[2] Statutory Rules and Orders, 1898.

[3] This is the term used in the regulation. It seems to be borrowed from the German.

the school is. It is prefaced by an explanatory article: "Children learn things more easily than grown-up people do. Children now growing up will, by the time they become men and women, need to know more about reading and writing and arithmetic than their parents do. But some foolish parents do not care whether their children learn these things or not. It is therefore for the good of the children that this law is made."

British New Guinea Syndicate.—Ordinance No. 1 was passed on March 21st, 1898, to enable an English syndicate or company to acquire and occupy Crown lands, not exceeding two hundred and fifty thousand acres, for the cultivation of the indiarubber plant and other tropical and agricultural produce, and for the discovery and working mines and minerals, and for getting and winning gems, metals, minerals, and mineral ores. S. 2 gives the company, for six months from the date of the Ordinance, the sole right to purchase all or any suitable lands declared to be and still available for occupation,[1] and a like right for six months as to lands subsequently made available, until the two hundred and fifty thousand acres are acquired. After eight years from the date of the Ordinance the sole right of purchase ceases, if sufficient land has during the period been available for purchase (s. 5). The company is required to pay two shillings an acre and the residue by instalments.

Native Labour.—No. 2 deals with native labour. It was reserved for her Majesty's pleasure, and was assented to by Order in Council of July 18th, 1898, and amends in certain details the Ordinance of 1892.[2] S. 4 allows the issue of permits to remove natives as seamen to Australia and adjacent Dutch and German possessions, and to Western Pacific Islands, declared to be within the section by order of the Administrator in Council. This section has been applied by proclamation[3] to all islands for the time being within the Solomon Islands Protectorate.[4] Under s. 5 European missionaries may get permits to remove natives to Australia for the purpose of translating from English into native languages of the possession. SS. 6 and 7 deal with the form and enforcement of guarantees required from persons obtaining permits.

Appropriation.—Ordinances Nos. 3, 4, 5, 6, 12, and 13 are Appropriation Ordinances, which in certain cases sanction expenditure not made under legislative authority, and indemnify the officers who issued and applied the money.

Fish Protection.—No. 6 forbids the use of explosives[5] for catching fish

[1] This Ordinance came under severe animadversion in Queensland and in the Imperial Parliament. It has not been formally disallowed, but is not operative.

[2] See *Journal*, N. S., vol. i., p. 122.

[3] Gazetted December 17th, 1898.

[4] See post p. 519.

[5] Cf. Imperial Acts, 40 & 41 Vict., No. 65 (*Public Fisheries*); 41 & 42 Vict., No. 39, s. 12 (*Freshwater Fisheries*).

in waters to be specified by proclamation of the Administrator—*i.e.* in all inland waters and all territorial sea waters of the possession.[1]

Chinese Immigration.—No. 8 restricts the immigration of Chinese. S. 4 prohibits entry of any ship carrying more than one passenger of the Chinese race[2] per five hundred tons of the ship's tonnage measured, if the ship be British, by the rules in the Merchant Shipping Act, 1894. This applies to transhipping vessels (s. 10). By s. 5 a list of all Chinese on board, including the crew and stowaways, must be delivered to the collector of customs before any one lands. By s. 6, before the ship clears, the master must muster before the collector all the Chinese crew and passengers. Chinese unlawfully entering by land or sea are subjected to penalties, and may be summarily prosecuted, notwithstanding lapse of the ordinary period of limitation—six months (ss. 8, 9, 10). By s. 11 the Administrator or Treasurer may by writing authorise the seizure of any ship the master of which has infringed, or is a defaulter under, the Ordinance, and its release on bond; and if penalties under a conviction are not paid, the ship may be sold. Whether a passenger is Chinese or not may be decided by the court on view, and the burden of proof is thrown on the accused (s. 13). The only Chinese exempted are (1) duly accredited diplomatic or consular representatives or emissaries, (2) persons born in British New Guinea, (3) persons or classes exempted by gazetted proclamation by the Administrator in Council (ss. 2, 3). It is to be noted that the exclusion is regulated by race and not by allegiance, and that Chinese from Hong Kong or the Straits Settlements who are British subjects are within the grip of the Ordinance.

Validity of Marriages.—No. 9 removes doubts as to the validity of certain marriages celebrated (before September 12th, 1898) before any missionary or teacher of any Christian mission, or before any minister of religion of any denomination of Christians. The validation is to be effected by order of the Administrator in Council (s. 1), made on the application of both parties if living, or by the survivor if one is dead (s. 2), and on production of such evidence as is required (s. 3), and subject to such enquiry before a justice of the peace as may be directed (s. 4). The validating order is to specify the date as from which the marriage is to be deemed valid (ss. 5, 6) and is to be registered (s. 7), and will not affect the validity of other marriages contracted before September 12th, 1898 (s. 9).

Public Health.—No. 10 is an Ordinance for the better preservation of the public health. Part I. authorises the declaration by Order in Council duly gazetted that a district is infected in which an infectious or contagious disease is suspected to exist (s. 2). There is no definition of the diseases to be included in the term "infectious or contagious."[3] Where such

[1] Proclamation gazetted September 24th, 1898.

[2] See *Musgrave* v. *Chun Teeong Toy* [1891], App. Cas. 272; and *Journal*, vol. ii., p. 336.

[3] See *Journal*, N. S., vol. i., p. 122.

an order is in force, no one may leave the district without permission (ss. 3, 4), nor may persons from outside an infected district communicate with or approach the district (s. 6). Vessels having a passenger from an infected district may be isolated and treated as infected districts (s. 5). Part II. deals with vaccination. It provides for vaccination, by public vaccinators (including all Government medical officers), or other persons certified as competent to vaccinate, of all persons presented to them for the purpose. The public vaccinators must act gratuitously, except under special written leave of the Administrator; but that does not debar an ordinary medical practitioner from taking a fee or make it obligatory on certified person to vaccinate. SS. 16 and 17 empower the passing of an Order in Council directing certain persons, or a certain class of persons, or all the inhabitants of a district to present themselves for vaccination, and empower any person entitled to vaccinate to arrest defaulters and vaccinate them by force. By s. 18, if a person entitled to vaccinate as aforesaid should be uncertain whether any person whom it is proposed to vaccinate (1) is a person ordered to be vaccinated or (2) has already been vaccinated, he may nevertheless vaccinate him. S. 19 punishes attempts to produce small-pox by inoculation with variolous matter or otherwise. By Part III., s. 20, "The Administrator in Council may from time to time make any regulations that he may deem requisite *for preventing the spread or the possession of any disease affecting human beings*, or for carrying into effect the provisions of this Ordinance. . . . Such regulations shall be published in the *Gazette*, and shall be laid before the Legislative Council as soon as they have been made, and shall be subject to disallowance by her Majesty."

Public Hospitals.—No. 11 empowers the administrator to establish and maintain public hospitals at any place in the possession, and to accept endowments for hospital purposes. Hospital property is vested in the Colonial Secretary as trustee for public hospitals (s. 10). The financial management is controlled by the Colonial Treasurer (ss. 11, 12). The hospitals are to be governed by public hospital rules made by the Administrator, gazetted and laid before the Legislative Council, and dealing *inter alia* with the terms and fees of admission, but not with medical treatment. Part II. constitutes a committee of management for each hospital, and deals with their duties. Part III. provides for the appointment (by the administrator) of all medical and other officers of the hospitals, subject to suspension by the committee of management.

9. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—10.

Appropriation.—Nos. 3 and 9 are appropriation Ordinances.

Customs.—No. 1 repeals the Customs Ordinance of 1888, and provides a new tariff of customs dues, which is of considerable length, containing many specific duties, but proceeds in the main on the basis of a twelve and a half per cent. *ad valorem* duty, and contains an *export* duty of two and a half per cent. on British sterling silver coin exported in quantities over £10.

Ordinance No. 2 amends the Customs Regulation Ordinance, 1891 to 1895, by providing for the payment of *ad valorem* duty on the basis of an invoice prepared in the country of export, stating the price payable by the *importers* in Fiji, and accepted as genuine and accurate by the collector of customs. It also (ss. 2, 5) prohibits importation of petroleum having a flash-point under 78° (previously 100°), and provides by a schedule for the mode of testing of the petroleum imported.

India Immigration.—Nos. 6 and 7 deal with the immigration of natives of India. No. 6 provides for an annual contribution of ten shillings (previously twelve shillings) from the general revenue to provide a fund for the return passage of each immigrant.

No. 7 permits the employer of indentured Indians, subject to the consent of the Governor, to employ the men on plantations other than those for which they are indentured. The consent is subject to such conditions as the Governor may impose, and also to the following statutory conditions:

(i) The work to which the immigrant is put must be similar to that usually required of him at the place where he was indentured.

(ii) It must be done under the supervision of the employer or his regular overseers.

(iii) The immigrant must not remain away for any night from his own plantation in consequence of the work.

The rights and liabilities of the immigrant and the employer are not affected by the change in his place of work, and his wages while so employed are a preferential charge on the estate to which he was originally indentured.

Native Lands.—The Native Land Ordinance of 1892 (No. 20), while recognising the native system of land tenure by family communities, permitted the leasing of native lands for not more than twenty-one years, subject to the consent of the Governor in Council and the regulations by the Ordinance provided.

Ordinance No. 8 of 1898, passed to facilitate the leasing of small areas of native land, permits the grant of leases of areas not exceeding ten acres, at a rent not exceeding £5, subject to the approval by the Governor in Council, and to stamping and sealing by the native commissioner, and

registration by the Registrar of Titles.[1] The requirement of the Ordinance of 1892 as to lodging a survey and plan is in such cases dispensed with, subject to regulations for securing identification of the land leased.

Summary Jurisdiction.—No. 5 permits the imposition of a fine on idle and disorderly persons.

Perjury.—No. 4 affords a precedent for the summary punishment of perjury. It applies only in cases before the Supreme Court or certain magistrates' courts presided over by European stipendiary magistrates nominated by the Governor, and duly notified. The operative clause (s. 1) is as follows:

> "If in any cause, suit, or action, civil or criminal, or in any proceeding connected therewith, it shall manifestly appear to the court that any person examined as a witness in open court upon oath, declaration, or affirmation, has committed wilful *or* corrupt perjury in any evidence so given, then in such case it shall be lawful for the court to cause such offender to be detained in custody, and at any time before the rising of the court on the same day, or if such case be not concluded on that day, then on the conclusion of such case, to take cognisance of the offence, and either to commit such witness, as for a contempt of the court, to prison for any term not exceeding six months, with or without hard labour, or to fine such witness in any sum not exceeding £20, provided that the powers hereinbefore given shall be in force and operative, notwithstanding any irregularity or want of form in the administration of the oath, declaration, or affirmation."

S. 2 requires the court to record and send to the chief justice the facts constituting the offence, with any statement made by the offender and the finding and sentence. S. 3 preserves the power in grave cases to direct a prosecution under the ordinary law.

Volunteers.—No. 10 provides for the establishment and regulation of a volunteer force to repel invasion and quell local disturbances at the call of the Governor, and to be constituted only of persons wholly of European descent. The discipline of the force when on military service is regulated by the Army Act, on other occasions by regulations made by the Governor and *Gazette*. A considerable feature in the Ordinance is the elaborate provision made for a regimental band.

[1] Registration of title was established by Ordinance No. 34 of 1876: until that date the New South Wales Act on the subject had been temporarily in force.

10. WESTERN PACIFIC.

[*Contributed by* W. F. Craies, Esq.]

Regulations passed—2.

By notices of the High Commissioner for the Western Pacific,[1] dated August 18th and November 12th, 1898, it was notified that the jurisdiction of the High Commissioner's court for the Western Pacific and the Pacific Order in Council, 1893, and the Queen's regulations made in accordance therewith, was extended to all persons residing or being within the limits of the protectorates established by her Majesty over the following islands, all made part of the Protectorate of the British Solomon Islands[2]:

Bellona Island.
Kennell Island.
The Santa Cruz Group, including—
Santa Cruz,
Utupua,
Vanikoro,
Tinakula (Tamani),
Matema.
The Island of Tucopia.
Anuda or Cherry Island.[3]
Fataka or Mitre Island.[3]
Trevannion or Temotu Island.[3]
The Reef (or Swallow) Islands, including—
Lombom (Nevelo),
Nifiloli,
Pileni,
Nukapu,
Nakoga (Analogo).
The Reef Islands, including—
Banganeda (Nibanga),
Banga Netepa (Banepe),
Nupani,
Fenuloa.
The Islands of Duff or Wilson Group.[3]

Solomon Islands.—Regulation No. 1 repeals s. 4 of the Solomons' Revenue Regulation Act, 1897,[4] and imposes on every ship or vessel trading within or to the protectorate, and not "recruiting" or "returning" labour there, an annual license of ten shillings per ton of tonnage measurement, not exceeding £100; and on punts or boats trading within the protectorate an annual license of ten shillings per ton. Labour vessels have to pay an annual license of £1 per ton, not exceeding £100, or a half-yearly license of twelve shillings per ton, not exceeding £60.

Gilbert and Ellice Islands.—Regulation No. 2 directs that proceedings under the Liquor Prohibition Regulation of 1897[5] (which provides for the making of orders prohibiting the supply of drink to inebriates), shall be taken in open court, and gives an appeal to the High Commissioner to persons aggrieved by orders or sentences thereunder, and a stay of execution pending the appeal on finding approved security.

[1] As to the mode of legislation for this area, see *Journal*, vol. ii., p. 202.

[2] Established May 27th, 1892 (*Hertslet*, vol. xix., p. 569).

[3] These islands are included in the notice of November 12th, 1898; the rest in that of August 18th.

[4] *Journal*, N. S., vol. i., p. 123.

[5] *Journal*, N. S., vol. i., p. 124.

V. SOUTH AFRICA.

1. CAPE OF GOOD HOPE.

[*Contributed by* ISRAEL DAVIS, ESQ.]

Acts passed—44.

Customs.—No. 6 amends the Act of 1897.

Dutch Reformed Church.—No. 9 provides that the Dutch Reformed Church may be extended beyond the limits of Cape Colony, and that congregations beyond the limits may be represented in the Synod, and governed by the laws and regulations of the Church. The doctrine of the Church is defined with reference to Ordinance No. 7 of 1843. The Act is to take effect upon request by the Synod to the Governor.

Xanthium Spinosum (Burrweed).—No. 18 (Divisional Councils Act Amendment) directs the divisional councils of the colony to warn owners and occupiers of land of the liability incurred by neglecting to extirpate the burrweed, and defines the penalty.

Parliamentary Representation.—No. 19 creates new electoral divisions and additional representation in existing divisions. It defines the limits of electoral provinces, and contains regulations for elections.

Royal Navy.—No. 20 provides that "from and after the taking effect of this Act there shall be paid annually to the Admiralty" (of the United Kingdom) "the sum of thirty thousand pounds out of the public revenue of this Colony, as a contribution towards the annual expenditure by the Imperial Government in connection with her Majesty's Naval Service."

Court of Appeal.—No. 22 repeals clauses in Act 35 of 1896 which are inconsistent with or repugnant to this Act. It gives the Supreme Court jurisdiction to hear appeals from any court from which appeals have been or may be prescribed to the Court by the Africa Order in Council, 1889 (October 15th), subject to the right of appeal to the Privy Council. Procedure may be regulated by rules under the Order in Council or by any special law, or by order of the Supreme Court. The Act provides for appeals to the Supreme Court of the Cape of Good Hope from the High Court of Southern Rhodesia when the amount in dispute exceeds £100, and by special leave when the amount is less, subject to further rights of appeal to the Privy Council. Procedure on such appeals is to be regulated by the ordinary rules of procedure on appeal to the Supreme Court, so far as not inconsistent with the Southern Rhodesia Order in Council, 1898. Power is given to the Supreme Court to act as a Court of Appeal in certain criminal matters tried in Southern Rhodesia.

Sale of Liquor.—No. 28 enables any licensing court to impose conditions short of total prohibition upon the holder of the license. These conditions must include a prohibition against selling liquor to natives at any railway

refreshment rooms. Outside the area of a municipality or of the operation of the Village Management Act of 1881, the Licensing Court is not to renew an existing license when more than half the voters for the divisional council of that district shall within fourteen days before the meeting of the court object to renewal.

Arbitration.—No. 29 provides for the settlement of differences by arbitration. In general this Act follows the English Arbitration Act, 1889. The arbitrator need not be named in the submission. Criminal matters, so far as the prosecution or punishment thereof is concerned, and, unless by special leave of the court, matters relating to status, matrimonial causes, or matters in which minors or persons under a disability may be interested, are excluded from the operation of the Act.

Mining for Precious Minerals.—No. 31 consolidates and amends the laws relating to prospecting and mining for precious minerals. Any person of good character may obtain a license to prospect for minerals. The license lasts for twelve months, enables the holder to peg out a claim 7,500 feet long and 800 feet broad without further payment, if on Crown lands, and for such consideration, if on private property, as may be agreed with the owner. Upon discovery of payable mineral, the rights of prospecting become converted into the right to select and peg out twenty-five claims of 150 feet by 800 feet. If the Governor does not proclaim a reef-digging on that place, the Act provides for other rights to be enjoyed by the first discoverer; and if a reef is proclaimed and produces 25,000 ounces of gold in three years, the discoverer becomes entitled to £5000. "Salting" and false declarations are made punishable. The Act contains provisions for the declaration and survey of areas as reef-diggings. The rights of private owners are declared. They include a right to a large proportion of the mining license moneys. Prospectors are prohibited from searching within two hundred yards of an inhabited house. No property is to be proclaimed a reef-digging where the owner neither prospects nor allows others to prospect. The owner of land proclaimed as a reef also obtains the right to a grant of mining leases of from two to five years' duration over any tenth part of his property so proclaimed, after the first discoverer has pegged out his claims. Subject to these rights, any person has the right to peg out five claims. Somewhat similar provisions are made in respect to alluvial diggings.

Appeals from Native Territories.—No. 32 provides for appeals from the courts of the chief magistrate in native territories to the Supreme Court in cases in which one of the parties is a European.

Natives.—No. 41 (Transkeian Territories' Penal Code Amendment Act) repeals s. 200 of Act No. 24, 1896, makes the head of a kraal responsible for cattle-thefts, and provides facilities for tracing and following stolen cattle.

Rogues and Vagabonds.—No. 44 (Police Offences Act Amendment Act) prohibits males, under penalty of fine or imprisonment, from living upon the earnings of a prostitute and from committing other similar offences.

2. NATAL.

[*Contributed by* Israel Davis, Esq.]

Acts passed—1 and 50.[1]

Zululand.—No. 37 of 1897 enables the Governor of Natal by proclamation to annex the territory of Zululand, which is henceforth to be the Province of Zululand. Laws in force in the territory are continued, except as expressly varied by this Act or by later Natal legislation. All persons living in Zululand who, if in Natal, would enjoy franchise rights are declared entitled thereto. The exercise of the rights is postponed till the necessary provision has been made by Parliament; but the Governor is to submit a Bill for such purpose next session. The Governor is empowered to apply to Zululand the Natal laws as to police, customs and excise, audit, post and telegraph, and registry of deeds; and up to June 30th, 1898, to vary the laws of Zululand by proclamation not inconsistently with the Act. The Crown Prosecutor of Zululand is to be subject to the Attorney-General of Natal; but the Supreme Court of Natal is not to exercise jurisdiction in the province except in accordance with later Acts. Her Majesty's engagements with native chiefs are to be performed by the Governor; and no alteration in the law as to the supply of intoxicating liquors to natives or any other classes under restrictions in regard to liquor is to be deemed to be effected by the passing of the Act. Until other provisions are made, no alienations of Crown lands shall be made, nor shall the natives be disturbed in occupation; but the section does not apply to township lands or lands reserved, or which may be reserved, for mining within Proclamation VII. (April 16th, 1894), or to rights already acquired from the Zululand Government. No charge is to be made for passes authorising natives to enter Natal from Zululand, and *vice versâ*. The Governor's salary is increased from £4000 to £5000.

No. 10 of 1898 increases the Legislative Council of Natal from eleven to twelve members, and the Legislative Assembly from thirty-seven to thirty-nine; makes Zululand a district for the purposes of the Council, and two districts (Etshowe and Melmoth) for purposes of the Assembly, and applies the charter of 1856 to the province.

No. 17 of 1898, reciting a proclamation of June 21st, 1887, which applied Natal laws to Zululand, enacts that the Natal laws passed since that date, and now in force, are likewise to apply, subject to certain limitations and alterations, and with certain exceptions, among which are the Mines Law of 1888, and laws referring to game of 1891 and 1894, to immigration of

[1] In the first session of the second Parliament one (printed) Act was passed (December 29th, 1897); in the second session fifty Acts were passed (January 10th, 1898, to December 12th, 1898).

1891, 1894, 1895, 1897, and to marriage with a deceased wife's sister of 1897.

No. 46 of 1898 extends the jurisdiction of the Supreme Court to Zululand.

Arbitration.—No. 24 of 1898 purports to declare the law of arbitration. It introduces provisions founded upon the English Act of 1889, with differences more apparent than real, and is still more similar to the Cape Act referred to above.

The Civil Service.—No. 25 of 1898 provides for the examination of candidates, and otherwise amends the Civil Service Act, 1891. No person is to be admitted to the service until he shall have attained seventeen years, nor, save as in the Acts specially provided, unless he is under twenty-five years of age. Rules may be made providing for special leave to civil servants who are volunteers.

Adulteration.—No. 26 of 1898 gives power to town councils to make bylaws for preventing adulteration of food and drinks, and to appoint analysts.

Glanders in Horses.—No. 27 of 1898 repeals the law of 1892, and provides for the isolation and reporting of cases of glanders. Any person offering for sale a horse, mule, or donkey infected, or which he has reason to believe may be infected, with glanders, is liable to a penalty of £50, or three months' imprisonment. Compensation for animals slaughtered is limited to £20, and to two-thirds of the value of animals whose disease was not openly manifested until shown by a test applied by the veterinary surgeon.

Locusts.—No. 30 of 1898 extends the provisions of an Act of 1895 for the extermination of locusts.

Contagious Diseases (Animals).—No. 40 of 1898 extends the provisions of an Act of 1894 for preventing the spread of contagious and infectious diseases among animals. A warranty against rinderpest is to be implied in ordinary sales, unless it be otherwise expressly stipulated in the conditions of sale or by written agreement. But the vendee must give notice within twenty-four hours after the first symptoms of rinderpest have been seen.

Impounding Cattle.—No. 42 of 1898, repealing, with savings, earlier legislation, codifies the law of impounding. Without prejudice to greater damages, a person on whose lands cattle have trespassed may charge, without proof of special damage, sixpence for every horse, one penny for each sheep or goat, threepence for other cattle trespassing on grass land, and larger amounts for trespass on "gardens, crops, or other cultivated lands."

Dramatic Property.—No. 44 of 1898 purports to declare "the law affecting play rights." Proprietorship of rights of representation may be registered. The duration of the right is the author's life and seven years, or forty-two years from registration. "Play-right" registered after the author's death endures for forty-two years from the date of registration.

Deceased Wife's Sister.—No. 45 of 1898 amends the Act of 1897, which

removed restriction upon marriage with a deceased wife's sister, by adding a saving clause as to property already inherited, and as to any *lis pendens*.

Administration of Justice.—No. 49 of 1898 constitutes a "native High Court" to exercise jurisdiction over natives; but proceedings in insolvency, ordinary questions of ownership of immovables, franchise, divorce, and other matters are excepted from its control. In Zululand chiefs are to have jurisdiction between natives of their own tribes in civil cases, except matrimonial causes and cases arising in connection with Christian marriages; and in criminal cases, with exceptions of capital and other grave offences, offences against persons not being natives, pretended witchcraft, and new statutory offences. Appeals lie to the magistrate, and from him to the native High Court, which also has large original jurisdictions.

South African Customs Union.—No. 50, after declaring it expedient to provide for the entry of the colony into a South African Customs Union, delegates to the Governor the right to notify the Colonial states and territories constituting such union, and from time to time to declare the admission to the union of other colonies, states, or territories based on civilised government.

VI. WEST AFRICA.

1. SIERRA LEONE.

[*Contributed by* ALBERT GRAY, ESQ.]

Ordinances passed—39.

Post Office Savings Bank.—By Ordinance No. 1 the Post Office Savings Bank Ordinance of 1896 is repealed, and the scheme is reconstituted with amendments.

Public Officers' Guarantee Fund.—An Ordinance to establish a guarantee fund was passed in 1896. The Governor was authorised to require every public officer employed in the revenue department to give security for the faithful performance of his duties. Every such officer was bound to contribute to the fund one per cent. of the amount for which security was required. The scheme has now broken down, and the Ordinance of 1896 is repealed, officers who have contributed receiving back the amounts paid by them (No. 3).

Notification of Disease.—The Public Health Ordinances are amended by provisions requiring the notification of cases of small-pox (No. 4).

Protection of Illiterates.—The prevalence of frauds in and by means of letters written for illiterate persons gives occasion for Ordinance No. 5. Any person who writes any letter or other document for an illiterate person, or to be signed or executed by such a person, must also write thereon his own name and address, which is to be deemed an assurance that he was instructed to write the letter or document, and that it correctly represents his instructions, and that it was previously to being signed read over and explained to the illiterate. A scribe who fails to write his name, or who writes falsely, is subjected to penalties on summary conviction.

Acquisition of Lands.—An amending law (No. 6) is substituted for Ordinance No. 32 of 1896. It is a "Lands Clauses" Act of a simple character. The Governor issues his fiat; the surveyor surveys; the chief justice settles the compensation. The present Ordinance, however, is an improvement upon its predecessor. The well-known English clause is introduced whereby the whole of a building must be taken, though only a part is required. The provisions as to compensation are fuller, providing for the proof and settlement of all separate interests in the land.

A notable provision of the new Ordinance is that compensation is not to be awarded in respect of unoccupied land. Land is "deemed to be unoccupied where it is proved that beneficial use thereof for cultivation or inhabitation or for collecting or storing water or for any industrial purposes has not been made for twelve years next prior to the date on which the land is appropriated."

Railways.—A new railway Ordinance is substituted for Ordinance No. 17 of 1896.

Volunteer Force.—The preamble to No. 13 recites, in frankly colloquial terms, that "several inhabitants of this colony have expressed a desire to be formed into a volunteer military force, and it is expedient to authorise the raising of the same." The Ordinance provides for the enrolment, training, and discipline of the force. The movement is an expression of loyalty evoked by the recent disturbances in the colony.

Habeas Corpus.—The next Ordinance (No. 14) in its preamble refers to the existence of a "treasonable and rebellious spirit of insurrection" in some parts of the colony, and authorises the Governor by his order to arrest and detain persons engaged in the rebellion or reasonably suspected thereof. It is, in fact, a suspension of *habeas corpus*.

Protectorate Delimitation.—The boundary of the protectorate is now fixed by the Anglo-French Treaty, and the limits are accordingly set forth in Ordinance No. 16. Within the limits so stated the Protectorate Ordinance of 1897 is to have operation.

Criminal Trials.—Important changes in criminal procedure are made by Ordinance No. 25. A person charged with any offence not punishable with death may claim to be tried by the court with assessors in place of a jury. Likewise the Attorney-General may on application obtain a trial

by the court with assessors in any case where a "more fair and impartial trial" will thus be obtained. The assessors are to be three in number, drawn from the special jury panel.

On a trial for an offence not punishable with death a verdict of three-fourths of the jury is to be taken as the verdict of the whole; but the court, if "not satisfied that the verdict of the said majority is in accordance with the weight of the evidence, may refuse to accept it, and in each and every such case the verdict shall be unanimous."

Special Commission.—A special Ordinance was necessary to arm the late Sir D. Chalmers with the powers necessary for carrying out his commission.

Hasty Legislation.—A protest may fairly be raised against the modes of Sierra Leone legislation which do not insure against frequent amendment of law during the same session. Ordinance No. 18 (passed June 17th) and No. 24 (passed August 15th) were repealed by No. 25 (passed September 2nd). So No. 23 (passed August 15th) was repealed by No. 26 (passed September 2nd). A Peace Preservation Ordinance, No. 17 (passed June 6th), is amended by a subsequent law (passed September 22nd). An Ordinance to regulate the appointment duties of the sheriff and under-sheriff (passed on October 3rd) is repealed and re-enacted with some changes on October 31st.

2. LAGOS.

Ordinances passed—10.

Firearms (No. 3).—This Ordinance amends in several particulars the Principal Act of 1892, regulating the importation, storage, and disposal of firearms, ammunition, and gunpowder in the colony. The policy of both Acts is to store firearms in public warehouses, and they are not to be withdrawn without the authority of the Governor or District Commissioner. A license to bear firearms must also be obtained, and its production may be required by any member of the civil police, subject to a penalty for refusal. Licenses are to be granted only to fit persons. Firearms of precision—*i.e.* other than flint locks with unrifled barrels—are not to be offered for sale. Flint locks may be sold under a license, and subject to inspection of the store. The Governor may at any time by proclamation prohibit all sale of firearms.

Railways (No. 6).—This Ordinance authorises the Government of any railway, when lands are required for the line, to serve notice by affixing the same on a conspicuous part of such lands, and at once to enter and deal with such lands as if vested in the Government.

Administration of Africans' Estates (No. 9).—The subject of this

Ordinance are Africans dying in foreign employment—that is, any foreign contract of service; and the object of the Ordinance is to provide a machinery, in the shape of an official administrator, to protect and distribute the estate.

Markets (No. 10).—This Ordinance authorises the Governor to establish markets and provide for their convenient use, compensating any person entitled to land or stalls in a demolished market. A committee is to be appointed to manage a market, and may exclude from the market defaulters or dishonest persons, or persons twice convicted of an offence under the Adulteration of Produce Ordinance, the Weights and Measures Ordinance, etc. Power is also given to apply the provisions of the Ordinance to markets formed under native law or custom, and generally to make bylaws.

3. GAMBIA.

Ordinances passed—8.

Criminal Jurisdiction (No. 3).—

Banishment.—This Ordinance authorises the administrator to banish any person from the protected territories, or order residence within certain limits.

Trial without Jury.—Where any criminal case is tried before the Supreme Court, it is to be tried without a jury, and the chief magistrate is to be the sole judge of all matters of fact.

Witchcraft.—If any person pretends to exercise or use any kind of witchcraft or sorcery, he is to be punishable with a fine not exceeding £10, or imprisonment. No such offence is to be tried by a native court without leave of the administrator.

Palm Wine (No. 7).—The duty on this is hereby abolished.

Buoyage Dues (No. 8).—This abolishes pilotage dues, and imposes in lieu thereof buoyage dues.

4. GOLD COAST.

[*Contributed by* Albert Gray, Esq.]

Ordinances passed—19.

Criminal Procedure.—A considerable number of amendments are made in the Procedure Ordinance of 1876 by Ordinance No. 2. One of the most important is that in all criminal trials the jury is reduced to seven, who may be either common or special jurors. But in case of crimes punishable with death all must be special jurors, unless a full jury cannot thus be obtained.

A number of provisions as to criminal lunatics are made. If during the

preliminary examination the accused appears to be of unsound mind, the magistrate may either stop the case and report to the Colonial Secretary, in which case the lunatic is left to be dealt with as the Governor directs, or he may proceed and commit him for trial. Provision is also made for a special verdict, amounting to "Guilty, but insane," as in the English statute.

Another useful provision is made whereby every judge, if of opinion that the offence would be adequately punished with fine or imprisonment for six months, can transform himself into a court of summary jurisdiction, and thus dispense with jury and assessors.

Divorce.—An amendment of the Supreme Court Ordinance, 1876, makes provision for the intervention of the Attorney-General in divorce proceedings, with the powers exercised in England by the Queen's Proctor. As this appears to be a fresh enactment, we may argue as we will, either that divorce is rare at the Gold Coast, or that the value of collusion has only recently been discovered.

Railway Extension.—Three Ordinances (Nos. 6, 7, and 17) make provision for railway extension.

Africans Dying Abroad.—An Ordinance for the administration of the estates of Africans dying while absent from the colony on service or otherwise (No. 11) was not sanctioned by her Majesty.

Adulteration of Palm Kernels.—The adulteration of palm kernels, which has already been made a punishable offence at the Niger Coast, to the great advantage of trade, is dealt with by Ordinance No. 15. The offence is defined as meaning, "To soak palm kernels in water, or to increase to the extent of ten per cent. the apparent bulk or weight of palm kernels by the combination, admixture, or addition therewith or thereto of some foreign superfluous or inferior substance, matter, or thing, whether deleterious or not."

VII. SOUTH ATLANTIC.

FALKLAND ISLANDS.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—10.

Publication of Ordinances (No. 1).—This is an "omnibus" Ordinance defining terms and dealing with various points of law in force in the colony and other general rules of law and procedure. The printing of any Ordinance or official document at the Government printing-office is to constitute in law a sufficient publication and promulgation (s. 1). Drafts of Ordinances are to be published in the *Gazette*, and a copy affixed to

a notice-board in Stanley for the inspection of the public one week before the introduction of the Ordinance. Copies of Ordinances are to be available for public inspection (s. 6).

Informalities.—Want of proper form is not to invalidate any order, judgment, or warrant (s. 11), nor is any verbal or technical error, any process or proceeding (s. 14). The Governor is empowered to divide the colony into districts where more convenient.

Administration of Justice (No. 2).—This Ordinance defines the constitution and jurisdiction of the Supreme Court, which is to consist of the Chief Justice and assessors, if any. The Chief Justice is to be a member of the Bar of England, Scotland, or Ireland, or some British possession, and of not less than seven years' standing. Law and equity are to be administered concurrently. On capital charges a jury of twelve men is required, who must be unanimous. In all other cases, civil and criminal, the jury is to consist of seven (s. 24). S. 26 allows an appeal to the Privy Council in respect of sums over £500. S. 27 makes certain exceptions from the right of appeal to the Court of Appeal.

Fire (No. 3).—This Ordinance authorises the formation of a volunteer fire brigade, which is to have the charge of all fire appliances. Members are to take an oath of faithful service in a schedule form, and rules are to be made by the superintendent for attendance at practice and fire drill (s. 6), and a Government inspector appointed (s. 19). By way of raising funds, all fire-insurance companies carrying on business in Stanley are to "contribute to the maintenance of the steam fire-engine an annual payment equal to one-eighth per cent. of the capital assured" (s. 15). No wood roofs are in future to be allowed (s. 16).

Juries (No. 4).—This Ordinance deals with jurors and trials by jury. Every man not being an alien between twenty-one and sixty, and being the owner or occupier of any real estate of not less than £10 per annum, or in receipt of an annual salary of £60, is liable to serve on juries (s. 1). Officials, lawyers, ministers, doctors, and pilots are exempted (s. 2). Juries for the trial of all issues not capital are to consist of seven persons. If five agree after two hours' deliberation, that is a verdict (s. 13). On unfinished trials the jury may be released, on oath not to communicate touching the trial (s. 19). Every juror serving is to be entitled to three shillings for being summoned, and five shillings a day more for serving, the party requiring the jury to deposit the amount with the registrar.

Gaols (No. 5).—This Ordinance makes provision for gaols and for their being inspected by visiting justices, and any complaints by prisoners heard. It also makes penal servitude equivalent to imprisonment with hard labour (s. 6). Executions are to be carried out within the walls (s. 11).

Coroners (No. 6).—Every stipendiary magistrate is by the Ordinance to be *ex-officio* a coroner. Information of every apparently non-natural death is to be given to the coroner, who is to proceed at once to the place where

the body is lying and hold an inquest. No such body is to be buried without an order of the coroner.

Trading Companies (No. 8).—Under this Ordinance are adopted the whole of the laws, rules, and regulations relating to trading companies which obtain in the United Kingdom (s. 1). A director's share qualification is not to be less in value than £10, unless the articles otherwise provide (s. 3). No minister of religion is by virtue of his office to be disqualified from being a director.

Harbours (No. 9).—The Governor in Council is by this Ordinance empowered to make regulations as to the preservation of ports, harbours, wharves, etc., anchoring-buoys, coaling, discharging, and other similar matters. The Ordinance also provides for the appointment of a harbour-master.

Post Office (No. 10).—This Ordinance again adopts bodily for the colony the whole postal law of England for the time being in force. The master of any departing vessel is to give not less than twelve hours' notice to the postmaster (s. 4), and is to carry every mail tendered him on behalf of the postmaster. The sender of a lost postal packet is to be indemnified out of the revenues of the colony.

VIII. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

[*Contributed by* J. A. Simon, Esq.]

Acts passed—Public, 54; Local and Private, 69.

Boundaries.—No. 3 rectifies the boundaries of the province of Quebec in accordance with powers conferred on the federal and provincial legislatures by the British North America Act, 1871.

Yukon Territory.—No. 6 declares the Yukon Judicial District (already constituted by proclamation) to be a territory separate from the North-West Territories. The Governor in Council is to appoint a Commissioner as chief executive officer of the Yukon territory, and, to assist him in administration, a council of not more than six. The Commissioner in Council is given power to make Ordinances, subject to disallowance within two years by the Governor in Council. A territorial court is constituted, with the noteworthy provision (s. 17) that none but British subjects can serve as jurymen. Besides the judicial and administrative officials, every commissioned officer of the North-West mounted police is both a justice of the peace and a coroner.

Frozen Meat.—No. 7 authorises a bounty not exceeding twelve thousand dollars a year to certain steamship companies in return for providing cold storage on voyages to the United Kingdom.

Franchise.—No. 14 repeals the previous Electoral Franchise Act, but does not affect certain provisions of the Dominion Elections Act or of the Corrupt Practices Act. S. 5 enacts that the qualifications, polling divisions, and lists of voters which are provided for provincial elections shall in every case be adopted for Dominion elections. This appears to involve slightly different regulations for different parts of the Dominion; but s. 6 excludes from Dominion elections certain special disqualifications (*e.g.* office) which may debar a person otherwise qualified from voting in a provincial election. Maintenance as an inmate in a municipal poor-house or house of industry is explicitly declared to disqualify.

Payment of Members.—No. 15 provides that the deduction of eight dollars a day shall not be made for fifteen days in the case of a member who has been absent from a sitting or committee.

Superannuation of Civil Servants.—No. 17 repeals existing provisions on the subject, and creates a retirement fund, formed by reserving five per cent. of each civil servant's income. On retirement or dismissal the amount standing to his credit, *plus* four per cent. interest, is to be paid over to him, while (unlike the scheme in force at Whitehall) if he dies in the service similar payment is made to his legal representatives.

Post Office.—No. 20 provides that upon a day to be named by the Governor-General's proclamation the inland rate for all letters shall be two cents per ounce, and that letters wholly unstamped shall not be forwarded at all. S. 4 makes the odd exception that books for the use of the blind shall be free of Canada postage.

Insect Pests.—No. 23 is an Act to prevent the introduction into Canada of the San José scale. The range of the Act is to be from time to time determined by the Governor in Council.

Adulteration.—No. 24 further amends the Adulteration Act. The unconscious seller of an adulterated article can protect himself by producing the manufacturer's warranty of genuineness and by proving that he sold the article in the same state in which he received it.

Weights and Measures.—No. 30 amends the existing law. S. 2 defines the bushel of numerous articles by weight.

Dominion Lands Acts, regulating settlement and sale of homesteads, is further amended by No. 31.

Registration of Title.—No. 32 amends the Land Titles Act, 1894.

Native Races.—No. 34 amends the Indian Act, making Indians residing upon any reserve liable to labour on the public roads running through it, and authorising the Governor in Council to introduce the elective principle in the choice of chiefs and headmen.

Irrigation.—No. 35 consolidates the North-West Irrigation Acts. Rights

of user of all waters are declared vested in the Crown, apart from existing private rights, and the latter must be attested by license.

Customs.—No. 37 sanctions the recent British preferential tariff.

Fishing.—No. 39 amends the Fisheries Act, s. 1 providing that all traps, nets, etc., are to be raised on Saturday night so as to allow fish a free passage on Sunday. (Cf. the regulations of some English conservancies—*e.g.* on the Northumbrian Coquet.)

No. 44 compels every boat putting out from a vessel engaged in deep-sea or bank fishing to carry a compass, and also two quarts of drinking water and two pounds of solid food for each man.

Steamboat Inspection.—No. 46 is an elaborate code for this purpose.

Company Law.—Nos. 49 and 50 amend the Companies Act. By the former a mining corporation in Yukon or North-West Territories may take out a license and thereby acquire the privileges of a free miner.

Liquor Traffic (No. 51).—The Prohibition Plebiscite Act regulates the recent attempt to gauge Canadian opinion by referendum, which had so remarkable a result. The question submitted was, "Are you in favour of the passing of an Act prohibiting the importation, manufacture, or sale of spirits, wine, ale, beer, cider, and all other alcoholic liquors for use as beverages?"

Evidence.—No. 53 amends the Canadian Evidence Act, 1893, by providing that no witness shall be excused from answering any question upon the ground that his answer may tend to criminate him, but that if he raises objections which would previously have been upheld, though he shall be compelled to answer, his reply "shall not be used or receivable in evidence against him" in any subsequent criminal proceeding against him other than a prosecution for perjury in giving such evidence.

2. BRITISH COLUMBIA.[1]

[*Contributed by* WALTER PEACOCK, ESQ.]

Constitutional.—The Re-Distribution Act, 1898, No. 38, provides for the re-distribution of British Columbia into electoral divisions. The Legislative Assembly is to consist of thirty-eight members, to represent the electoral districts, and to be elected in manner provided by the Provincial Elections Act. The boundaries of the districts and ridings are defined, and the number of members to be returned by each. After the passage of the Act, the registers of former districts shall be closed, and the Lieutenant-Governor in Council shall appoint collectors for the newly constituted districts to make up new registers of voters. Courts of revision are to be held by collectors on the tenth day before the election, for the purpose of hearing

[1] The Session 61 Vict. ended on May 20th, 1898. Of the Acts passed—65 in all—the first 45 are classed as Public, the remainder as Private Acts.

objections to any names entered upon the register; and appeals therefrom are to be heard by the county court judge.

The Provincial Elections Amendment Act, 1898, No. 18, repeals ss. 14 and 15 of the Provincial Elections Act, and substitutes fresh clauses dealing with interrogatives to be answered by persons claiming to vote.

The Provincial Elections Act Amendment Act, 1898, No. 19, re-enacts the sections of the Provincial Elections Act relating to the ballot.

Municipalities.—The Municipal Elections Amendment Act, 1898, No. 20, empowers the council of any township to provide by bylaw that householders whose names have been lawfully placed on voters' list be entitled to vote without making an annual application, unless change of residence or other change has altered their qualifications.

The Municipal Clauses Amendment Act, 1898, No. 35, amends the Municipal Clauses Act with regard to the qualifications of reeve, councillor, etc., and re-enacts the clauses dealing with the sale of land for municipal taxes in arrear. No writ of execution against a municipality is to be issued without the leave of a judge of the Supreme Court, which is to be obtained on summons. The Act also authorises municipalities, when required, to pay money into court as security for payment of judgment debt or damages, and to pass bylaws authorising the borrowing of the money for the purpose.

Public Works.—The Public Dyking Act, 1898, No. 17, confirms the purchase made by the Lieutenant-Governor in Council of certain dyking debentures in pursuance of the Dyking Debenture Act, 1897; authorises the issue of further debentures to meet the cost of the completion and extension of dyking works commenced in pursuance of the same Act, and provides for further works and fresh borrowing.

The British Columbia Public Works Loan Act (1897) Amendment Act, 1898, No. 30, authorises the Lieutenant-Governor in Council to raise by sale of debentures a larger sum than was authorised by the Act of 1897; and the subsidies in aid of the construction of certain railways are increased.

Land Registry.—The Land Registry Act Amendment Act, 1898, enables any person deprived of land through fraud or misrepresentation, in the registration of another as proprietor of such land, to bring an action for recovery of damages against the person by whose fraud he was deprived; but this is not to prevent proceedings being taken against the registrar in respect of any loss not recovered in such action. Purchasers or mortgagees for value, however, are not subject to such action, even though they derive title through a person registered as owner through fraud. Should the person liable be dead, or not to be found, an action can be brought against the registrar as nominal defendant. A remedy for mistakes of the registrar is provided by action against him for recovery of damages. Where damages are recovered, the Minister of Finance, on the judge's certificate of the fact of such judgment, is to pay the amount and charge it to the Assurance fund. This fund is formed by deducting 20 per cent. from the amount of fees

received by the registrar and accumulating with interest until it reaches fifty thousand dollars. The sections dealing with application to the court by persons dissatisfied with registrar's decisions or orders, or by the registrar in matters of law or of fact, are amended.

Escheats.—The Escheats Act, 1898, No. 21, authorises the Attorney-General to cause possession to be taken, in the name of the Crown, of lands that have escheated through intestacy, or have become forfeited through any cause except crime, and, where possession is withheld, to cause an action similar to other actions for the recovery of land to be brought for the recovery thereof. The Lieutenant-Governor in Council is empowered to grant such lands, or, in the case of personal property, to make an assignment to legal or moral claimants, or to any person, as a reward for discovering the escheat or right of the Crown. The grant may be made without actual entry and although the lands are not in the actual possession of the Crown. The Act also provides for the waiver of Crown rights in the case of forfeitures.

Company Law.—The Companies Act Amendment Act, 1898, No. 13, amends the Companies Act, 1897, and provides that every provincial company registered in the province before the passage of the Act of 1897 as a foreign company shall be subject to it.

The Companies' Winding-up Act, 1898, No. 14, deals with the voluntary winding-up of companies, and is based on the (Imperial) Companies Act, 1862.

Legal Professions.—The Legal Professions Amendment Act, 1898, No. 8, provides that an applicant for call or admission as barrister or solicitor may base his claim on previous call or admission in more than one place or province in her Majesty's dominions, so long as the place or province where he has been called or admitted in the first instance requires not less than three years' study.

Profession of Medicine and Surgery.—The Medical Act, 1898, No. 9, provides that the medical profession incorporated under the name of the Medical Council of British Columbia be henceforth known as the College of Physicians and Surgeons of British Columbia, and be a body corporate with power to acquire real or personal property and to sue or be sued. The college is to have a council, the constitution, officers, and meetings of which are dealt with in the Act. A medical register is to be kept, and only those whose names are inscribed thereon are entitled to practise. The qualifications of persons entitled to be registered are defined, and include homœopathic physicians holding a diploma of qualification from an authorised college, requiring at least a four years' course of study, upon passing a satisfactory examination before the council. Penalties are imposed for false declarations in obtaining registration, and for practising without registration; and there are clauses dealing with subjects for anatomy.

Industrial Communities.—The Industrial Communities Act, 1898, No. 6, authorises the incorporation of societies for providing members with the

means of self-employment in any branch of lawful industry; for making provisions against sickness, and relieving the widows and children of deceased members; for the investigation of science, the care and education of children, and any benevolent or charitable purpose. The Act enables such societies to appoint trustees or other officers for conducting their affairs; to make bylaws, and also to acquire real and personal property for the promotion of the objects of the society.

Benevolent Societies.—The Benevolent Societies Amendment Act, 1898, No. 3, extends the powers of benevolent societies with regard to the establishment of chambers of mines, mining institutes and associations.

The Agricultural Credit Societies Act, 1898, No. 2, is for the encouragement of trades and agriculture by the establishment of mutual credit associations for the purpose of procuring moneys by contributions from members, to be employed in loans to members only, for their advancement. Loans may be made for aiding a member to drain and clear land; to purchase livestock, farming implements, etc.; the construction of fences and buildings; and to a certain extent the funds of the society may be employed in the purchase, use, and repair of machinery for the use of members in clearing and draining land. Provision is also made for the issue of debentures and for winding up.

Farmers' Institutes.—The Farmers' Institutes Amendment Act, 1898, No. 5, amends the Farmers' Institutes and Co-operation Act with regard to the objects of the institutes, and in other unimportant particulars.

Labour.—The Master and Servant Amendment Act, 1898, No. 31, provides that "any agreement or bargain, verbal or written, expressed or implied, which may be made between any person and any other person not a resident in Canada for the performance of labour or service, or having reference to the performance of labour or service, by such other person in the province of British Columbia, and made as aforesaid previous to the migration or coming into Canada of such other person whose labour or service is contracted for, shall be void and of no effect as against the person only so migrating or coming." This section, however, is not to be so construed as to prevent "any person from engaging under contract or agreement skilled workmen not resident in Canada to perform labour in British Columbia in or upon any new industry not at present established in British Columbia, or in any industry at present established, if skilled labour for the purpose cannot be otherwise obtained; nor shall the provisions of this section apply to teachers, professional actors, artists, lecturers, or singers."

The Truck Act, 1898, No. 43, ss. 3-9, enacts that in all contracts for the employment of any workman, the wages of such workman shall be made payable in lawful money of Canada only, or the contract shall be illegal, null, and void. Contracts that make provision as to the place or manner of expending wages are also void. Any workman shall be entitled to recover from his employer so much of his wages as shall not actually have been paid

in lawful money of Canada, and the employer may not set off against wages goods supplied on account of wages, nor sue for goods so supplied. These sections, however, only apply to workmen employed on works in some incorporated town or within three miles thereof, and are not to prevent an employer from contracting to supply to such workmen medicine or medical attendance, or fuel, or provender for any working animal employed by such workmen in their trade. Railway companies may also contract to supply workmen employed on permanent works with board and lodging on their boarding-cars, and deduct for the same from wages.

The Labour Regulation Act, 1898, No. 28, prohibits the employment of Chinese and Japanese on certain works.

Minerals.—The Mineral Claim Advertisement Act, 1898, No. 32, provides that in a notice of application for a certificate of improvements of a mineral claim, s. 36 (*e*) of the Mineral Act shall not be construed as requiring the separate publication of a notice for each mineral claim, but a number of claims may be included in one notice.

The Mineral Act Amendment Act, 1898, No. 33, amends the Mineral Act with regard to fractional mineral claims, the mode of staking out a claim and the purchase of a claim, and enables a free miner, on payment of an additional fee, to record his certificate, after the proper time has elapsed.

The Placer-Mining Act (1891) Amendment Act, 1898, No. 34, provides that in the case of the purchase of claims from persons who have failed to take out a free miner's certificate, the purchaser may make good his title by paying within one month from the time of discovering the default, to the recorder of the mining division, the fee which ought to have been paid. The Act also provides for consolidating leases of placer-mining ground up to six hundred and forty acres ; and water grants made for working any one of such leases shall be appurtenant and used on any one of such consolidated leases.

Game.—The Game Protection Act, 1898, No. 24, amends and consolidates the Acts for the protection of certain animals, birds, and fishes. The exportation of certain animals and game birds is prohibited, and no person other than the importer on his own property may hunt, kill, or wound game birds or animals imported for acclimatisation until such times as the Lieutenant-Governor shall appoint. There is a schedule showing the close seasons, and the number of any kind of animal or game bird that may be taken in one season.

Revised Statutes.—The Statutes Revision Act, 1898, No. 40, declares the Acts contained in the Revised Statutes to be the laws of the province, including certain Acts specified in a schedule, which are new provisions framed by the commissioner for the improvement of the law.

Definition of Time.—The Definition of Time Act, 1898, No. 42, provides that where an expression of time occurs in any Act or legal instrument, the

time shall be held to be standard time, which is to be reckoned as regards that part of the province which lies east of the meridian 120° long as seven hours, and as regards that part that lies west as eight hours, behind Greenwich time.

3. NEW BRUNSWICK.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—99.

Supplies.—No. 1 contains a money grant for defraying the civil expenses of the province to October 31st, 1899.

Crown Lands (No. 6).—The Crown Lands Settlement Act is passed to make provisions to afford greater encouragement to young men of the province to settle upon wilderness lands, the property of the Crown. Persons over the age of eighteen may be allotted land to the extent of a hundred acres, provided they have no real estate, and desire the land for their own benefit and for the purpose of actual settlement and cultivation. The allottee must commence chopping and improving the lot assigned to him within one month after the approval of his application, and must within three months have improved it to the value of twenty dollars. He must also within a year build a house fit for habitation, and chop down and cultivate no less than two acres. He must also cultivate and clear not less than ten acres within three years, and must reside continuously upon the land for the first three years, and from thence up to the issue of the grant. On compliance with these conditions a grant is made. He has no power to alienate, and for certain omissions and offences may forfeit, his allotment.

Fisheries (No. 7).—The New Brunswick Fisheries Act provides for the artificial propagation of fish, and for the issue of fishery leases and licenses, and for the appointment of fishery overseers to carry out the provisions of the Act.

Game (No. 8).—The Game Act, 1899, appoints close seasons for all sorts of animals, and makes it an offence to hunt, or in any ways destroy, any moose or caribou, deer, mink, fisher or sable, partridge, wild goose, brant, teal, wild duck, black duck, snipe, woodcock, musk-rat, or beaver during the close times mentioned in the Act. It is also an offence to hunt or destroy any calf-moose under the age of one year, or any cow-moose; any game on Sunday; any game in any public park; any sea-gull, pheasant, or any small birds which frequent the fields and woods, excepting blackbirds, crows, and sparrows; or to use dogs or any artificial light for the capturing of moose or deer; or to use any punt-gun, or swivel-gun, or nets, or lights

[1] The Session 62 Vict. began on March 23rd, 1899, and ended April 25th. Of the Acts passed in this session, 40 were Public Acts, 44 Local, 15 Private.

for the catching of wild goose, teal, etc.; and provisions are made in the Act for the conviction and punishment of offenders.

Mines (No. 9).—This enactment was passed to facilitate the discovery and development of oil and natural gas that is within the province. Under this Act the Lieutenant-Governor in Council may grant a license, and the licensee is bound within two years from the date of the license to expend in boring for oil and natural gas not less than twenty thousand dollars, and not less than a hundred thousand dollars within the five years from the date of the license.

Lord's Day (No. 11).—Under this Act no person shall on Sunday sell or publicly show forth or offer for sale or purchase any goods, chattels, or other personal property, or any real estate whatsoever, or do or exercise any worldly labour, business, or work of his ordinary calling—conveying travellers or her Majesty's mails by land or water, selling drugs and medicine and works of necessity and charity only excepted. Milk and ice may be delivered on Sunday. Telephone and telegraph companies may transmit and deliver messages; cabs may be let out for other purposes than that of doing business or work; Monday morning's editions of newspapers may be prepared; physicians, clergymen, organists, choristers, and sextons may follow their vocations on Sundays; vessels may put to sea for any destination without the limits of the province; pilots and tugs may ply; mills and manufactories may in cases of necessity be worked; pumping of mines, towing and freighting of timber may take place to prevent loss or injury; fishing-boats may load and unload; through freight-trains may run; and steam-vessels under contract with the Canadian Government may load and unload. No person shall allow tippling in any inn, tavern, or house of public entertainment; no person shall play skittles, ball, football, rackets, or any other noisy game, or gamble or run races or go fishing; and steamships and railways may not convey excursionists on Sunday.

Sale of Chattels (No. 12).—This enactment provides that the conditional sale of chattels shall not be valid unless evidenced in writing signed by the conditional purchaser, which writing must be registered according to the provisions of the Act.

Rates and Taxes.—No. 20 amends the consolidated statute of rates and taxes.

Public Health.—No. 36 amends the Public Health Act, 1898, and empowers the local board of health to appoint a health officer, who shall be a duly registered physician, to be the sanitary adviser of such board; and power is also given for the appointment of an inspector to carry out the provisions of the Public Health Act, 1898.

4. NOVA SCOTIA.

[*Contributed by* L. S. Bristowe, Esq.]

Acts passed—Public General, 64; Local, 61; Private, 81.

Railways.—No. 4 amends No. 53 of the Revised Statutes, 5th Series, "Of Railways," by making various provisions and imposing various restrictions as to tolls, and by giving large powers to the railway committee to make regulations as to speed and otherwise, and to hear and determine disputes between railway companies and other persons, and to award costs. The decisions of the committee may be made orders of the Supreme Court and enforced accordingly; and the committee is empowered to direct enquiries, to make reports, to compel the attendance of witnesses, and to state cases for the opinion of the High Court.

Statute Law Revision.—No. 6 authorises the appointment of commissioners to revise and consolidate the Public Acts of the province in suitable form for presentation to the Legislature by December 31st, 1898.

Provincial Loan.—No. 7 authorises a loan not exceeding eight hundred thousand dollars on the credit of the revenue and property of Nova Scotia, to be raised by debentures.

Queen's Counsel.—No. 9 authorises the appointment of Queen's Counsel, and declares the precedence of the various members of the Bar.

Mines.—No. 10 amends No. 8 of the Revised Statutes, 5th Series, "Of the Regulation of Mines," and the amending Acts in respect of the appointment of, and the facilities to be given to, a check-weigher.

Insolvents.—No. 11 avoids confessions of judgment, warrants of attorney, etc., by insolvent persons or persons on the eve of insolvency, with intent to defeat creditors. It also avoids gifts, conveyances, assignments, transfers, deliveries or payments of real or personal property by persons in insolvent circumstances or on the eve of insolvency, with intent to defeat or delay their creditors, or for the purpose of giving one creditor an unjust preference over others. Assignments for the benefit of creditors to an official assignee appointed by the Governor in Council for the county in which the debtor resides or carries on business, or to some other person within Nova Scotia, with the consent of the creditors, are excepted from the above provisions, as also *bonâ-fide* sales or payments in the ordinary course of trade, and conveyances, or deliveries of goods, *bonâ-fide* made for valuable consideration. The Act makes provisions as to the form and effect of assignments for the benefit of creditors, and for the property and assets of estates so assigned not being removed from the province, and for the priority and proof of claims, and the proper distribution of the insolvent's estate, including the making of accounts and statements and the payment of dividends.

Married Women.—By No. 22 the Acts relating to the property of married

women are consolidated and amended, and the Married Women's Property Act, 1884, is repealed. The Act provides that a married woman shall be capable of holding and disposing of real and personal property, and of contracting and suing and being sued to the extent of her separate property as if she were a *feme-sole*, and that any contract entered into by a married woman otherwise than as agent shall bind all her present and future separate property, except that which she is restrained from anticipating. All property of a woman marrying after the commencement of the Act is made separate property, except that the Act does not apply to profits of a business carried on separately from the husband unless he files in the Registry of Deeds a consent in writing to its so applying, and that a woman carrying on a separate business must record a certificate stating her own and her husband's name and the nature and place of the business. Loans by a wife to a husband for the purposes of his business are in case of insolvency postponed to other debts. The Act provides that the execution by a married woman of a general power by will shall make the property assets for payment of her debts. Deposits, stocks, shares, etc., in the name of a married woman are to be her separate property, unless the contrary appears, and the husband need not join in a transfer. The Act authorises married women to insure their own or their husbands' lives, and provides that an insurance by a husband on his life expressed to be for the benefit of his wife and children shall create a trust. It also contains provisions with respect to the liability of a husband for his wife's ante-nuptial contracts and torts, and enabling a husband to give evidence against his wife or *vice versâ*, and with regard to a husband neglecting to support his wife, and as to obtaining protection orders, and the effect of such orders; and it renders a married woman having separate property liable to the maintenance of her children.

Dower.—No. 23 makes a number of provisions with regard to the dower of married women. The Act empowers married women, by deed acknowledged, to convey or concur in conveying estates, or to release them from dower or other claims. The acknowledgment requires to be certified, and it and the certificate must be registered with the deed. If a husband disposes of his property by will inconsistently with his wife's right to dower, she is required to elect between her right to dower and her rights under the will; and various other provisions are contained as to the right of a married women to dower. The Act further empowers a married woman to dispose of her property by will (subject to certain provisions as to its execution), except that if it is made without her husband's consent, the husband has a right to elect between the provision made for him by the will and his tenancy by the curtesy in his wife's real estate. If a married woman dies intestate her husband takes one-third of her personal estate, and the remainder is distributed among her issue, or, in default of issue, one-half goes to the husband and one-half to her father, or if none, her mother,

brothers, and sisters and the issue of deceased brothers and sisters. If there are none of these, the whole goes to the husband.

San José Scare.—No. 24 is an Act for preventing the spread of the San José scare, prohibiting the keeping or disposing of infected plants, and appointing inspectors.

Game.—No. 25 amends the Nova Scotia Game Act, 1896, as regards the times for killing hares, wild rabbits, and partridges, and in some other respects.

Mines.—Nos. 26, 27, and 28 amend the Mines and Minerals Act of 1892 as regards grants of areas for alluvial gold-mining and prospecting licenses and leases.

Sewers and Dyke and Marsh Lands.—Nos. 29, 30, and 31 amend No. 42 of the Revised Statutes, 5th Series, "Of Commissioners of Sewers and of Dyke and Marsh Lands." The first Act gives commissioners of sewers large powers for making dykes, bridges, roads, tide-gates, and weirs, and for draining or drowning marshes and swamps.

The second Act grants facilities to the proprietors of marsh lands enclosed by dykes, or two-thirds in interest of such proprietors, to construct works for reclaiming any outer and unenclosed marsh, and of throwing the whole into one level.

The third Act provides for the establishment by commissioners of sewers of fences in marsh lands, and for keeping the same in repair, and dividing the cost among the proprietors.

Towns' Incorporation.—No. 32 amends the Towns' Incorporation Act, 1895, and amending Acts. After making a number of amendments of detail, it provides for the appointment of "revisers" to revise the lists of electors for the House of Assembly and for the election of the mayors and councillors.

Nos. 33 and 36 further amend the same Act.

Juries.—No. 38 amends No. 106 of the Revised Statutes, "Of Juries." It reduces the number of grand jurors to be summoned at any term of the Supreme Court from twenty-four to twelve, and provides that seven instead of twelve grand jurymen shall be competent to find a true bill.

Nos. 39 and 40 further amend the same Act.

Private Ways.—No. 44 provides machinery (by means of a petition to the provincial secretary, and an enquiry by a commissioner appointed on such petition by order in council as to the propriety of the application, and arbitration as to the amount of compensation) by which mine, mill, granary, farm, or factory owners or occupiers may acquire a right of way for their produce to railways, public ways, or tidal or other waters.

Education: Truant Children.—No. 45 amends the Towns Compulsory Attendance Act. It provides for the arrest and conveyance to school of any child who has once been convicted as a habitual truant, and authorises the imprisonment of a child so convicted.

Crown Lands.—No. 68 provides for the appropriation to the construction and maintenance of roads of the proceeds of sale of certain Crown lands.

Jury Panels, etc.—No. 63 legalises jury panels, assessment rolls, and revisers' lists for 1898.

Supply.—No. 64 makes provision for defraying expenses of the Civil Government of the province.

Minor Acts.

Railways.—Nos. 1 and 3 amend No. 1 of the Acts of 1886, authorising grants in aid of railways.

No. 2 amends No. 9 of the Acts of 1895, amending the Railways' Aid and Consolidation Act, 1886.

Agriculture.—No. 5 amends No. 3 of the Acts of 1894, amending the Acts for the encouragement of agriculture.

Succession Duties.—No. 8 amends No. 8 of the Acts of 1895, "Of Succession Duties."

Local Hospitals.—No. 13 amends No. 2 of the Acts of 1896 with respect to the encouragement of local hospitals.

Provincial Exhibitions.—No. 14 amends No. 3 of the same Acts as to providing an Annual Provincial Exhibition.

Probate Courts.—No. 15 amends No. 2 of the Acts of 1897, amending and consolidating the Probate Court Acts.

Sheriffs.—No. 17 amends No. 26 of the Acts of 1887, amending No. 17 of the Revised Statutes, "Of Sheriffs."

Public Health.—No. 18 amends No. 12 of the Acts of 1893, amending the law relating to public health.

Intoxicating Liquors.—Nos. 19, 20, and 21 amend No. 2 of the Acts of 1895, respecting the sale of intoxicating liquors.

County Courts.—Nos. 35, 36, and 37 amend the County Courts Consolidation Act of 1889.

Public Instruction.—Nos. 41, 42, and 43 amend No. 1 of the Acts of 1895, "Of Public Instruction."

Municipal Assessment.—No. 46 amends the Municipal Assessment Act of 1895.

Trust Estates.—No. 47 provides for the vesting of a certain trust mortgage in the Commissioner of Public Works and Mines.

Collection Act.—No. 49 amends the Collection Act of 1894.

Incorporation of Counties.—Nos. 59, 60, and 61 amend No. 3 of the Acts of 1895, amending and consolidating Nos. 5 and 6 of the Revised Statutes "Of County Incorporations."

Life Annuity.—No. 62 contains a grant of a life annuity.

There are also the following minor amendments of the Revised Statutes, 5th Series:

No. 20, "Of Jails and other County Buildings," by No. 50.

No. 21, "Of the Church of England," by No. 51.

No. 28, "Of Rabid Animals," by No. 52.
No. 37, "Of the Maintenance of Bastard Children," by No. 53.
No. 38, "Of Lunatics," by No. 54.
No. 47, "Of Highway Labour," by No. 55.
No. 67, "Of Fences and Impounding of Cattle," by No. 56.
No. 78, "Of General Provisions respecting Corporations," is amended by No. 12.
No. 79, "Of Joint Stock Companies," by No. 57.
No. 100, "Of the Probate Court and Procedure Therein," is amended by No. 16.
No. 122, "Of the Partition of Lands," by No. 58.

5. MANITOBA.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—60.

Food (No. 2).—The Bake-shops Act, 1898, provides that bakeries must be constructed so as not to be detrimental to the health of persons working therein, and must be kept at all times in a clean and sanitary condition. The sleeping places of the employés must be separated from the shop, and no employer shall knowingly require, permit, or suffer any person to work in his bake-shop who is affected with consumption of the lungs, or with scrofula, or with any venereal disease, or with any communicable skin disease. And every employer is required to maintain himself and his employés in a clean and healthy condition while engaged in the manufacture, handling, or sale of bread-stuffs. Every offence is punishable, and the third offence may entail six months' hard labour.

Destitute Children (No. 6).—The Children's Protection Act of Manitoba provides for the appointment of a superintendent of neglected children, whose duty it is to encourage and assist in the establishing of societies for the protection of children from neglect and cruelty; and he has full power to see that the provisions of the Act are complied with.

Children (boys if under fourteen and girls if under sixteen) come within the purview of the Act when found under the following conditions: Begging in the streets or wandering about at a late hour; or sleeping at night in the open, or in barns and outhouses; or found associating with a thief, drunkard, or vagrant; or who, by reason of the neglect or drunkenness or other vices of their parents, are suffered to grow up without salutary parental control or education, or in circumstances exposing them to idle or dissolute lives; or are found in disorderly houses; or are destitute orphans,

[1] The Session 61 Vict began on March 10th, and closed on April 27th, 1898. Of the Acts passed, 44 would probably be considered in the United Kingdom as Public Acts.

or deserted by lawful parents, or found guilty of petty crimes, or likely to develop criminal tendencies if not removed from their present surroundings. Children coming within any of the above descriptions may be arrested, and, if the judge before whom they appear so order, may be put under the guardianship of a society whose duty it is to find them suitable foster-homes.

Compensation for Death (No. 11).—This enactment amends the Act respecting compensation to families of persons killed by accident by allowing the persons who are to receive the compensation to maintain actions in their own names in certain eventualities.

Administration (No. 15).—This enactment amends the Devolution of Estates Act, and empowers the administrator to mortgage real estate for payment of debts, taxes, or other incumbrances; to release equities of redemption, and to mortgage for the purpose of raising money to pay for any necessary and proper repairs, or for improvements to real estate.

Evidence.—No. 17 amends the Manitoba Evidence Act to the extent of allowing the Queen's Bench courts to examine witnesses ordered to be examined under a commission issued by any tribunal of competent jurisdiction outside of Manitoba. Such an examination is subject to the same rules as an examination in a cause pending in the Queen's Bench of the province.

Game.—No. 19 amends the Game Protection Act, and fixes the close time for grouse from November 15th to October 1st, and also makes it unlawful for any person in any one year or season to kill more than one hundred grouse and prairie chickens, or to kill more than twenty such birds in any one day. The Act also gives complete protection to beaver.

Liquor (No. 26).—This enactment amends the Liquor License Act by making it obligatory for commercial travellers to have licenses when soliciting orders for liquor to be imported into the province. It is also unlawful for licensed houses to put up screens so as to prevent persons seeing into the bar during prohibited hours.

Lord's Day (No. 27).—The Lord's Day Act contains provisions making it illegal for any merchant, tradesman, artificer, mechanic, workman, labourer, or other such persons to sell or expose for sale or purchase any goods, chattels, or real and personal property on Sundays, or on such a day do or exercise any worldly labour, business, or work of his ordinary calling; conveying travellers or her Majesty's mails, selling drugs and medicines, and other works of necessity and of charity only excepted.

By the same enactment it is unlawful for any persons to play any game within any enclosure to which persons are admitted on payment of a fee, or to play or run races for reward, or to shoot at targets, marks, or other like objects with guns, rifles, or firearms. Public places of amusement may not be opened on Sundays when an admittance fee is charged.

Workmen's Liens (No. 29).—The Mechanics' and Wage-Earners' Liens Act, 1898, consists of forty-eight sections dealing with the liens of workmen.

Under this Act any person, unless he signs an express agreement to the contrary, who performs any work or service upon or in respect of, or places or furnishes any materials to be used in the making, constructing, erecting, fitting, altering, improving, or repairing of any erection, building, land-wharf, pier, bulkhead, bridge, trestle-work, vault, mine, well, excavation, side-walk, paving, fountain, fish-pond, drain, sewer, aqueduct, roadstead, way, or the appurtenances of any of them for any owner, contractor, or sub-contractor, has a lien upon such works if his claim amounts to over twenty dollars. The lien, when registered, attaches at the commencement of the work. The Act contains full provisions for the enforcement of the lien, registration, and priority.

Municipal (No. 31).—This enactment amends the Municipal Act, and, besides making various alterations in sections of the Act, it provides new rules of the road. Vehicles meeting are to drive to the right, giving half the road to the meeting vehicle. Bicycles and tricycles, when meeting a carriage, are to pass to the right, and must be given sufficient room to enable them to do so. Overtaken vehicles are to turn to the left; the overtaking vehicles are to turn to the right. Bicycles and tricycles are to give audible warning before attempting to pass any vehicle.

Supply.—Nos. 47 and 48 contain grants for defraying civil expenses of the province.

6. PRINCE EDWARD ISLAND.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—24.

Evidence (No. 3).—This enactment amends the Act respecting witnesses and evidences by making it necessary, when commercial travellers sue for the recovery of purchase-money, to prove that at the time the sale was entered into they were in possession of a valid license according to the provisions of the Act.

Bankruptcy (No. 4).—By this enactment a confession of judgment, cognovit, or warrant of attorney made by an insolvent debtor is void when given with intent to delay or defeat a creditor's claims; and an assignment of goods made with the same intent is also void, except when made to an official assignee or to an innocent purchaser for present value. In the case of an assignment to an official assignee for the benefit of creditors, such assignee must pay the wages, not exceeding three months, of persons in the employment of the person making the assignment, in preference to the claims of other creditors. Provisions are also made for creditors' meetings and the methods by which their claims are to be proved.

[1] The Session 61 Vict. was held on May 14th, 1898. Of the Acts passed in this session, ten would probably be treated in the United Kingdom as Public and General,

Queen's Counsel (No. 5).—Only four Queen's Counsel may be made in any four years, except in the case of any person appointed Attorney-General or Solicitor-General of Canada, or Attorney-General of this province, or in the case of a Queen's Counsel appointed by the Governor-General in Council, for the Federal Courts, and who has not been appointed by the Lieutenant-Governor in Council.

The order of precedence in the provincial courts is as follows :

1. Attorney-General of Canada.
2. Attorney-General of the province.
3. Members of the Bar of the province who have filled the office of Attorney-General of Canada or Attorney-General of the province, according to seniority of appointment.

Game (No. 9).—This enactment forbids the killing or having in possession any partridge within the province for the period of two years.

Supply.—No. 10 contains a money grant for defraying the civil expenses of the colony.

7. NEWFOUNDLAND.

[*Contributed by* L. S. Bristowe, Esq.]

Acts passed—47.

Legislature.—No. 1 makes various provisions relating to the internal economy of the Legislature. It provides that on dissolution of the Legislature the Speaker shall act until a Speaker is chosen by the new legislature. It also provides for the appointment by the Governor in Council of various officials and a Commission of Internal Economy of the Legislature, to consist of the President and two members of the Legislative Council, and the Speaker and three members of the Executive Council who are members of the House of Assembly. Estimates of the sums required for salaries and other internal expenses are to be prepared annually by the clerk of the Legislative Council and the clerk of the House of Assembly, and submitted to the commission for approval, and when approved they are to be transmitted to the Receiver-General to be laid before the House of Assembly. The sums ultimately voted are paid to the order of and distributed by the commission.

Seal Fishery.—No. 2 provides a bounty not exceeding four dollars per registered ton for every registered vessel fitted out for and *bonâ fide* prosecuting the seal fishery in 1898.

Department of Marine and Fisheries.—No. 3 constitutes a Department of Marine and Fisheries, to be presided over by a Minister of Marine and Fisheries appointed by the Governor. An officer, to be called the Superintendent of Fisheries, is also provided for, who is to be the deputy head of the department. The functions of the department include the control of pilots and pilotage, beacons, buoys, and lighthouses, signals, harbours, piers, wharves, and

St. John's dry dock, the classification of vessels and granting certificates to masters, etc., shipping masters and officers, and care of distressed seamen, ship-building and inspection of vessels, and the duties of Wreck Commissioners. The department is also entrusted with the administration of all laws relating to sea-coast and inland fisheries; and an annual report is to be submitted to the Governor, to be laid before both Houses of the Legislature. Provision is also made for the appointment by the Governor of a Fisheries Board, to consist of seven members, with the Minister of Marine and Fisheries as president. The functions of the Board are to make enquiries as to the preservation and development of the fisheries and fishing trade. The Governor is also authorised to make regulations for the better management and regulation of the sea-coast and inland fisheries; and penalties are imposed on any one violating the Act or the regulations. Powers are also given to the Governor, on the recommendation of the Minister of Marine and Fisheries, to set apart and lease rivers or other waters for the natural or artificial propagation of fish.

Seal Fishery.—No. 4 provides for the close season for seals.

Railways.—No. 6 confirms and gives effect to an agreement between the Governor and R. G. Reid for amalgamating several lines of railway into one system, and adding to them (the combined and extended railway to be called the Newfoundland Railway), and also for providing and subsidising an improved mail and steamship service for the colony. The Act makes various provisions for the carrying out of the agreement and the working of the railway and steamships.

Appropriation.—No. 7 makes appropriations out of the Consolidated Revenue Fund for the expenses of the public service of the colony for the years 1896-7, 1897-8, 1898-9.

Salaries.—No. 8 provides the salaries to be paid to the Governor and various State officials.

Retiring Allowances.—No. 9 grants certain retiring allowances.

Appropriation and Supply.—No. 10 provides for the appropriation and expenditure of 1,000,000 dollars, paid by R. G. Reid for the purchase of the interest of the Government in the Newfoundland Railway, and 325,000 dollars paid by him for transfer of the dry dock. It also authorises a loan up to 349,857 dollars on the credit of the colony.

S.S. "Greenland."—No. 11 provides 5,500 dollars for the relief of sufferers from the s.s. *Greenland* disaster.

Revenue.—No. 12 imposes customs duties on various imported goods, and allows drawbacks on exported tobacco, on paper used by printers, on exported biscuit, malt-liquors, and some other articles. Additional duties are also imposed on certain articles imported from particular places, but the clause may be suspended by proclamation.

Customs.—No. 13 is a long Act of two hundred and sixty sections, providing machinery for the collection of customs duties.

Stamps.—No. 14 makes various provisions as to the preparation and design of stamps, and as to the payment of fees by stamps, and as to the stamping of instruments. An unstamped instrument is not to be acted on by the court or any other authority.

Public Funds and Audits.—No. 15 provides that all public moneys over which the Legislature has powers of appropriation shall form one consolidated revenue fund, to be appropriated for the public service of the colony, as in the Act mentioned. The Governor is authorised to make regulations for the management of the public debt and payment of interest. Provision is also made as to the manner of raising loans, and powers are given to the Governor to change the form of any part of the funded debt (including debentures) by substituting one class of securities for another, and to raise temporary loans. The Governor is empowered to determine what officers are required to collect and manage the revenue, and to assign to them their duties and salaries. Provision is also made for the appointment of an Auditor-General, with a staff of officers; and duties connected with the supervising and checking payments out of public moneys are assigned to him.

Colonial Secretary and other Departments.—No. 17 constitutes the following departments of the civil service—namely, the Department of the Colonial Secretary, the Department of Public Charities, and the Post Office Department, over which a minister, to be called the Colonial Secretary, is to preside. Provision is also made for the appointment of a Deputy Colonial Secretary, a Commissioner of Public Charities, and a Postmaster-General, to be the deputy heads of the three above-named departments respectively. The functions of the Colonial Secretary include the control of education, elections and registration of voters, census, patents, copyrights and trade-marks, newspapers, public printing and stationery, weights and measures, licensing, and marriage.

Department of Justice.—No. 18 establishes a Department of Justice, to be presided over by the Minister of Justice, who is to be the Attorney-General of the colony. Provision is made for the appointment of a Deputy Minister of Justice. The Minister of Justice is the legal adviser of the Governor and the Crown, and a member of the Executive Council, and superintends all matters relating to the administration of justice.

Departments of Finance and Customs.—No. 19 constitutes a Department of Finance and a Department of Customs, under the presidency of the Minister of Finance and Customs; and provision is made for the appointment of a deputy head of the Department of Finance and an assistant collector of customs to be deputy head of the Department of Customs. The Act also provides for the appointment of a Treasury Board, consisting of the Minister of Finance and Customs, the Minister of Justice, the Colonial Secretary, and another member of the Executive Council to be nominated by the Governor, who are to act as a committee of the Executive Council on all matters relating to finance, revenue, and expenditure or public accounts.

Department of Agriculture and Mines.—No. 20 constitutes a Department of Agriculture and Mines, to be presided over by the Minister of Agriculture and Mines, with a deputy, both being appointed by the Governor. The Minister of Agriculture and Mines has control of the Crown lands, and ordnance, and Admiralty lands; geology and natural history; mines and minerals; timber lands, and lumber and pulp mills, and manufactories; the inspection of lumber; agriculture; the preservation of game and sheep; and immigration and emigration.

Public Works.—No. 21 constitutes a Department of Public Works, under the presidency of the Minister of Public Works, with a deputy minister (to be the chief engineer of the department), and a secretary and other officers. The Minister of Public Works has the management of the construction and repair of harbours, piers, roads, bridges, public buildings, and other public works; but he may not authorise expenditure not sanctioned by the Legislature except for necessary repairs and alterations.

Contingencies.—No. 22 makes provision for the contingency expenses of various departments of the Civil Service.

Sheriffs.—No. 23 provides for the appointment by the Governor of one sheriff for each of the three judicial districts of the colony, and for the appointment of deputy sheriffs.

Central District Court.—No. 24 amends s. 5 of No. 52, of the Consolidated Statutes, 2nd Series, relating to the Central District Court.

Banknotes.—No. 28 prohibits the issue of less than five-dollar banknotes, or other instruments intended to circulate as money, except by leave of the Governor in Council.

Local Affairs.—No. 31 vests the control and management of sectional divisions of the colony prescribed by proclamation of the Governor in elective boards, called divisional boards. Regulations as to the constitution and election of the boards are to be prescribed by the Governor. Provisions are made as to first and subsequent elections of the boards, the tenure of office, qualification of voters, the conduct of business, and so forth. The powers of the boards extend to roads, bridges, sewers, sanitation, removal of obstructions from highways, abatement of nuisances, and lighting of towns and settlements; and the Governor may commit the relief of the poor to them. The boards have large powers of making rules and regulations. The Act does not apply to the electoral district of St. John's.

Agriculture.—No. 33 provides a bonus of twenty dollars per acre for clearing and cultivating Colonial land, and empowers the Governor to clear Crown lands for settlement, and to make rules as to the clearing of land.

Cold Storage.—No. 36 enables the Governor to guarantee payment of interest at five per cent., up to a capital of £30,000, for any number of years not exceeding five, by any company engaged in cold storage, or any other business connected with the fisheries of the colony.

Judicature.—No. 37 abolishes the division of the legal year into terms.

It also makes provisions as to the times for drawing grand and petty jury panels, and their terms of attendance; and in other respect amends the Judicature Act, 1889.

Trustees.—No. 38 is an Act corresponding to the Imperial Trustee Act, 1893, and containing other provisions as to trustees and executors similar to those in certain other imperial statutes. It defines the investments on which trust funds may be invested in the absence of special provisions; and gives similar powers as to appointing new trustees, and vesting the trust property in them; and makes similar provisions as to the exercise of trusts and powers of sale, and as to the use of depreciatory conditions; and gives trustees similar powers of appointing agents, insuring renewing leases, and of giving receipts, and of compounding and settling debts, as are contained in the Imperial Act. It also includes provisions corresponding to those in 22 & 23 Vict., No. 35, as to notices for creditors by executors, and administration and distribution of assets; and enables any trustee, executor, or administrator to apply to the court by petition for the determination of any question relating to the management or administration of the trust property. It also contains powers to trustees for infants to apply the income for their maintenance similar to those in the Imperial Conveyancing and Law of Property Act, 1881, and extends the statutes of limitations to trustees in like manner as is done by the Imperial Trustee Act, 1888.

The Act gives to the court the powers with respect to the appointment of new trustees and vesting orders as are contained in s. 25 and the following sections of the Trustee Act, 1893; and it also enables the interest of a beneficiary instigating or requesting a breach of trust to be impounded by the court as an indemnity.

Perjury.—No. 40 makes perjury or subornation of perjury a misdemeanour punishable by fine and fourteen years' imprisonment, and defines what constitutes perjury.

Elections.—No. 42 amends the Election Act, 1889.

Education.—No. 43 amends the Education Act.

Lunacy.—No. 44 amends the Lunacy Act, 1897, by enabling a person alleged to be insane to be committed, by a justice of the peace, to gaol for a reasonable time, with a view to his being removed to a lunatic asylum after examination by a medical practitioner.

St. John's.—No. 45 amends St. John's Municipal Act, 1892.

French Treaties.—No. 46 continues the Newfoundland French Treaties Act.

Supreme Court.—No. 47 provides that the Supreme Court shall be duly constituted, notwithstanding the absence of a judge, and also makes provision as to the tenure of office and salaries of the judges.

Minor Acts.

Telegraphs.—No. 5 is an amending Act relating to the New York, Newfoundland, and London Telegraph Company.

Public Loans No. 16 amends No. 11 of the Consolidated Statutes, 2nd

Series, "Of loans upon the credit of the colony issued in the United Kingdom."

Harbour.—No. 25 amends No. 120 of the same statutes as to a harbour-master for the Port of St. John's.

Banknotes.—No. 26 amends s. 11 of 58 Vict., No. 1, respecting Union banknotes.

No. 27 amends 58 Vict., No. 2, respecting commercial banknotes.

No. 29 amends s. 2 of No. 119 of the Consolidated Statutes, 2nd Series, relating to pilots at the port of St. John's.

No. 32 repeals s. 6 of No. 14 of the same statutes.

No. 34 amends No. 13 of the same statutes as to renewing leases.

No. 35 amends Nos. 124 and 125 of the same statutes.

No. 39 amends s. 2 of 59 Vict., No. 18, as to slander.

No. 41 amends No. 15 of 60 Vict., relating to guarantees by companies.

8. PROVINCE OF ONTARIO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed—79.

Revised Statutes (No. 2).—This Act declares that the Revised Statutes of Ontario had been on, from, and after the 31st day of December, 1897, and should thereafter be in force in the province, subject to the provisions contained in the Act for the consolidation of the statutes of Ontario (60 Vict., No. 3).

Revision of Voters' Lists (No. 3).—This Act enables the county judge presiding over the Voters' Lists Court to make such corrections in the list of voters as the evidence in his opinion warrants with respect to the right character and qualifications under the Manhood Suffrage Act of the persons to be voters.

Suffrage Registration (No. 4).—This Act amends the Manhood Suffrage Registration Act in various ways, and makes penal corrupt practices, such as bribery, treating, etc. Persons found guilty of an offence under the Act are made subject to penalties and disqualification from voting at any election for three years thereafter.

Election of Members of the Legislation (No. 5).—This Act amends the Ontario Election Act as regards the personal expenses of candidates and the qualifications and duties of returning officers.

Civil Service Retiring Allowance (No. 6).—This Act declares that persons who after January 1st, 1898, become members of the civil or public

[1] The Session 61 Vict., being the fourth session of the eighth Legislature of Ontario, was begun and holden at Toronto on November 30th, 1897. The above Acts received the Lieutenant-Governor's assent on January 17th, 1898.

service of the province shall not be entitled to a retiring allowance upon retiring from such service, nor their families in case of their death.

Civil Servants' Salaries (No. 7).—This Act enables the creditor of a Government officer, clerk, or employé, by notice served upon the treasurer of the Province, to attach all debts then owing by the Crown to the employé to the same extent as a garnishee order issued by a court of law.

Crown Lands (No. 9).—This Act regulates the sale of pine timber lands by the Commissioners of Crown Lands.

Forest Reserves (No. 10).—This Act enables the Lieutenant-Governor in Council to set apart portions of the public domain for the purpose of future timber supplies, such tracts of land to become by proclamation permanent Crown forest reserves.

Mining Claims (No. 11).—This Act amends the Mines Act (Rev. Stats., No. 36). It provides for the granting and renewal of miners' licenses, and regulates the conditions to be fulfilled by licensees applying for patents or leases for lands embraced in their claims.

Investment of Funds in Court (No. 13).—This Act amends the Judicature Act (Rev. Stats., No. 51) by empowering the Supreme Court of Judicature for Ontario to invest funds in court in the purchase of debentures issued by any municipality in the province under the provisions of the Municipal Drainage Act, or by any county or union of counties in the province under any other authority.

Judicature (No. 15).—This Act amends the Division Courts Act (Rev. Stats., No. 60) as to committal of debtors under judgment summonses.

Companies Acts (No. 19).—This Act amends the Ontario Companies Act (Rev. Stats., No. 191) by providing that it should not be deemed obligatory on a company, when stamping or marking its name on bales, etc., of goods or merchandise, to use the unabbreviated word "limited."

Cemeteries (No. 21).—This Act enables trustees or companies holding lands adjoining one another, or in the same municipality or neighbourhood, as sites for burial-grounds, to appoint trustees to whom such sites of burial-ground shall be conveyed in perpetual succession for the purpose of burial-grounds.

Municipal Councils (No. 23).—The Municipal Amendment Act, 1898, amongst other amendments of the existing Municipal Act (Rev. Stats., No. 223), provides—

(1) That the council of every town with a population not exceeding five thousand shall consist of a mayor and six councillors, to be elected by a general vote.

(2) That after two annual elections the council of a town may, and, upon petition of twenty per cent. of the electors, shall, by a bylaw assented to by a majority vote of the electors, divide the town into wards for the election in each of one councillor, the remaining councillors to make up the number of six being elected by a general vote.

(3) That the council of any town with a population of more than five thousand, and of any city with a population not exceeding fifteen thousand, may by a bylaw receiving the assent of the electors provide that the council of such town or city shall be composed of a mayor and one alderman for each one thousand of population, to be elected by a general vote.

Further provisions are included as to polling hours, appointment of public auditors, borrowing powers, supervision of trees on streets, purchase of fire-engines, issue of debenture loans for drainage, and granting bounties for the establishment of rolling mills and ironworks.

Assessment Rates (No. 25).—The Assessment Amendment Act, 1898, amends the Assessment Act (Rev. Stats., No. 224).

Public Libraries (No. 27).—The Act respecting public libraries in villages amends the Public Libraries Act (Rev. Stats., No. 232), and provides that on the petition of not less than thirty electors in a police village, the township may, with the assent of the electors, establish a public library under a public library board composed of trustees appointed in manner therein specified.

Toll Roads (No. 29).—This Act is to further facilitate the purchase of toll roads by the municipalities.

Sale of Patent and other Medicines (No. 30).—This Act, respecting the sale of patent and other medicines, and of alcohol for the purposes of arts and manufactures, makes various provisions as to the sale of medicines containing alcohol, and for an analysis of all patent and proprietary medicine kept for sale by chemists.

Gambling (No. 31).—This Act prohibits gambling and games of chance at agricultural and other public exhibitions, or within half a mile thereof, and is incorporated with the Agricultural and Arts Act (Rev. Stats., No. 43).

Protection of Infants (No. 32).—This Act amends No. 258, Revised Statutes, 1897, and makes further provision respecting maternity boarding-houses and the protection of infant children.

Universities (No. 35.)—This Act amends the Act respecting the University of Toronto and University College, and the federation thereof with other universities and colleges (Rev. Stats., 1897, No. 298), and provides for the separate representation of the Victoria University on the senate of the University of Toronto for six years, after which period such separate representation shall cease, and the graduates of the two universities shall vote as one body on elections to the senate.

Gaols (No. 36).—This Act contains various provisions for the management of gaols.

The remaining Acts (Nos. 37-79) are of a local and personal character, and show a predominant tendency on the part of the municipalities and townships to foster, by bounties and other public aids, industrial and trading undertakings.

9. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

The Acts passed during the session were 109. A large proportion were local and personal Acts.

Licenses (No. 14).—This provides for the grant of liquor licenses to railway companies and inland navigation companies for the benefit of travellers (s. 5). Prosecutions for the illicit sale of intoxicating liquors in licensed clubs may be taken either against the manager or the actual vendor, or against the club as a body corporate (s. 11). A penalty is imposed on any person, licensed or unlicensed, who sells intoxicants as non-intoxicants (s. 12).

Farmers' Clubs (No. 17).—This makes it compulsory on these societies to hold meetings at which lectures, open to the public, on agriculture are to be given, on being required so to do by the Commissioner of Agriculture: in default, the provincial grant may be taken away (s. 1). Each club is to receive an annual grant at the rate of fifty cents per member.

The Bar (No. 27).—

Discipline.—This Act, which amends Arts. 3523, 3527, 3539, 3561, 3562, and 3567 of the Revised Statutes, and 58 Vict., No. 36, confers on the Council of the Bar a power to summon witnesses and examine them on oath. Every complaint against a member of the Bar is to be made under oath taken before the syndic. An appeal to the General Council is to lie only when it appears on the face of the complaint that the council had no jurisdiction (s. 2).

Fees.—Every member of the profession is to pay annually six dollars to the treasurer of his section if he has an office at the chef-lieu of the section, three dollars if he has an office outside (s. 3).

Disqualification: Penalty.—S. 4 imposes a penalty on a disqualified advocate practising. S. 5 imposes a penalty of from twenty-five to sixty dollars on a person not an advocate practising.

Anatomy (No. 29).—This Act authorises the superintendent of any institution to which the Anatomy Act applies to order a post-mortem examination when it is important that the cause of death should be clearly determined.

Physicians and Surgeons (No. 30).—This Act makes a series of amendments as to the organisation of the council, of discipline, proceedings upon complaints, appeals, and execution of judgments.

Civil Engineers (No. 32).—The object of this Act is to define the qualifications necessary for permission to practise as a civil engineer in the province.

Definition.—The expression "civil engineer" is to mean any one who acts or practises as an engineer in advising on, in making measurements for, or in laying out, designing, or supervising the construction of railways,

metallic bridges, wooden bridges the cost of which exceeds sixty thousand dollars, public highways requiring engineering knowledge and experience, roads, canals, harbours, river improvements, lighthouses, and hydraulic, municipal, electrical, mechanical, or other engineering works, not including Government colonisation roads or ordinary roads in rural municipalities; but it is not deemed to apply to a mere skilled artisan or workman (s. 1).

Qualifications for Admission.—S. 4 constitutes a board of examiners, and s. 6 prescribes the conditions of admission to practise—payment of a fee of forty dollars, that the candidate is twenty-one years of age, of good character, has practised engineering in the office of a member of the society for five years, and passed an examination in the theory and practise of engineering (s. 6). An unqualified person practising as a civil engineer is not to be entitled to recover for his professional services.

Architects (No. 33).—This Act amends the Act 54 Vict., No. 59, in certain particulars. The most important is that imposing a fine of not more than twenty-five dollars on any one taking or using the title of architect either singly or in connection with any other word giving it to be understood that he is an architect under the Act, unless he is registered as a member of the Association of Architects.

Joint Stock Companies (No. 35).—This Act amends the Joint Stock Companies General Clauses Act and empowers directors to make bylaws for issuing any part of the capital stock as preferred stock, and giving the same a preferential dividend. The preference shareholders may also be given a right to elect a certain number of the board or any other control over the affairs of the company. Any such bylaw must, however, be sanctioned either unanimously by the shareholders in writing or by a unanimous vote at a meeting. If sanctioned by only three-fourths of the shareholders in value, it is to come into force only after being approved by the Lieutenant-Governor in Council. Nothing done is to affect the rights of creditors.

No. 36 is an Act amending the Joint Stock Companies' Incorporation Act (Rev. Stats. 4717) and empowering the directors in terms identical with those of the above Act to issue preference stock.

Fire Insurance (No. 38).—The object of this Act is to authorise the directors of mutual fire insurance companies to create a reserve fund—not exceeding one hundred thousand dollars—to aid the members in years of heavy loss.

Mutual Benefit Societies (No. 39).—By 59 Vict., No. 34, foreign mutual benefit societies were, with certain qualifications, not to carry on business in the province. The present Act gives power to societies of this kind incorporated in any province in Canada to obtain a license to transact business on the conditions set forth in the Act (s. 1). These conditions include a deposit of five thousand dollars with the provincial treasurer, the selection of a head office in the province and a chief agent to represent it, a fee of fifty dollars to the treasurer of the province; also a certification that

the society has carried on business for the preceding five years, insures its members only, has more than five hundred members, etc. The society is to make an annual report of its affairs to the provincial treasurer (s. 4), who may, if he thinks proper, have an inspection of the finances made by the inspector of insurance (s. 5), and, if necessary, order an additional deposit: on default, the society's license may be cancelled.

Life Insurance (No. 41).—Policies of life insurance settled by husbands and parents for the benefit of their families were by Art. 5604 of the Revised Statutes made unassignable either by the insured or by the parties benefited. This is now repealed, and, instead, it is enacted that "the insured and the parties benefited may join in assigning any such policy."

Partnerships (No. 42).—Art. 5635 of the Revised Statutes requires partners intending to trade to make declaration of their intention, names, and residences, and of the style or trade name under which they intend to carry on business in a specified form, which is to be registered. The present Act provides that no such declaration is to be registered if it gives to any partnership the name, style, or firm name of an existing partnership.

Shorthand Writers for Courts (No. 48).—By this Act the prothonotary of the superior court of each district is bound to supply competent stenographers to take the depositions of witnesses in cases before the superior court, and in appealable cases before the circuit court (s. 2). The efficiency of such stenographers is to be established by examinations held by a committee of the Bar of each district, appointed for that purpose by the Council of the Bar (s. 3). The tariff of fees for taking evidence by stenography and transcribing the same is to be fixed by the Lieutenant-Governor in Council (s. 4).

Admission to the Bar (Nos. 93-7).—These are a series of Acts each authorising the admission of a law student—disqualified for some informality—to the Bar of the province.

10. NORTH-WEST TERRITORIES.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Ordinances for 1898.—In 1898 the Revised Ordinances of the Territories, 1885, were amended and consolidated. They consist of ninety-three chapters and are divided into thirteen titles of classes. It is impossible in the present number of the *Journal* to do more than give a description of the Ordinances in each title. These revised Ordinances came into force on March 15th, 1899.

Title II.—Nos. 2-20 deal with the legislative, executive, and general government.

[1] Owing to the late arrival of the Ordinances for 1898, they could not be noticed in the "Review of Imperial Legislation" of last year.

TITLE III.—Nos. 21-36 relate to the administration of justice, the law of slander, limitation of actions, and arbitrations.

TITLE IV.—Nos. 37 and 38 deal with the law relating to real property.

TITLE V.—Nos. 39-45 are Ordinances respecting the sale of goods, factors and agents, choses in action, preferential assignments, mortgages and sales of personal property, hire receipts and conditional sales of goods, the law of partnership.

TITLE VI.—Nos. 46-50 relate to marriages, married women's property, compensation to the families of persons killed by accidents, insurance for the benefit of wife and children, masters and servants.

TITLE VII.—Nos. 51-60 are Ordinances relating to professions and trades, liens in favour of mechanics, and threshers' liens.

TITLE VIII.—Nos. 61-9 deal with the incorporation and regulation of joint stock companies and kindred institutions.

TITLE IX.—Nos. 70-5 are Ordinances respecting municipalities, the assessment of railways, villages, local improvement, schools, and irrigation districts.

TITLE X.—Nos. 76-85 relate to agriculture, stock, and the preservation of game.

TITLE XI.—Nos. 86-8. These Ordinances deal with the pollution of running streams, prevention of prairie and forest fires, and the construction of chimneys.

TITLE XII.—No. 89 regulates the sale of intoxicating liquors.

TITLE XIII.—No. 90 empowers a justice of the peace to incarcerate a person suspected of being insane.

No. 91 forbids work and the playing of games in public, or hunting on Sundays.

No. 92 makes it a punishable offence to supply a person under sixteen years of age with tobacco.

11. NORTH-WEST TERRITORIES.[1]

[*Contributed by* H. STUART MOORE, ESQ.]

Ordinances (for 1899) passed—31.

Supply.—No. 1 provides funds for the public service up to December 31st, 1899.

Coal-Mines.—No. 4 amends the Coal-Mines Regulation Ordinance by restricting the time for any person to work in a coal-mine to eight hours a day, and forbids the employment of boys under twelve years of age and women in the workings of any coal-mine.

[1] The session commenced on April 4th, and closed on April 29th, 1899. Of the Ordinances passed in this session, six would be treated in the United Kingdom as Private Acts.

Partnerships (No. 7).—This Ordinance contains all the provisions of the Partnership Act, 1890, 53 & 54 Vict., No. 39, of the United Kingdom, with such modifications as are necessary for the effective working of the Act within the territories. It also contains special provisions as to limited partnerships, their registration, liability, and dissolution.

Company Law (No. 12).—This Ordinance furnishes the machinery and procedure to be followed in the winding-up of joint stock companies.

Agriculture (No. 14).—This Ordinance provides for the organisation and encouragement by money grants and otherwise of agricultural societies whose objects are to encourage improvements in agriculture, horticulture, arboriculture, manufactures, and useful arts.

IX. WEST INDIES.

1. THE BAHAMAS.[1]

[*Contributed by* Wallwyn P. B. Shepheard, Esq.]

Acts passed—32.

Land-holding by Alien Corporation (No. 2).—This Act empowers the Fort Dallas Land Company—a corporation existing by virtue of the laws of the State of Florida in the United States—to acquire and hold lands within the Bermudas, subject to the requirements in the Bermudas Act, 54 Vict., No. 3.

Vaccination (No. 4).—This Act is for the promotion of a more extensive and general system of vaccination throughout the colony.

Dogs (No. 13).—The Dog License Act, 1898, makes the taking out of a license to keep a dog compulsory on every dog-owner. A badge of metal with the license number thereon is to be issued with each license, and such badge suspended to the neck of the dog.

Sick Poor Relief (No. 14).—The Out Island Medical Act, 1898, provides for the appointment of duly qualified graduates or licentiates in medicine or surgery, of British or foreign medical or surgical institutions, as public physicians to attend upon and prescribe for sick persons destitute of the means of obtaining such attendance or medicine at their own cost.

Judicature (No. 20).—The Supreme Court Amendment Act, 1898, is consolidated with the Supreme Court Acts of 1896 and 1897; and the three

[1] The extra Session 61 Vict. commenced December 15th, 1897, and ended January 26th, 1898. The Session 61 & 62 Vict. commenced on March 15th, and ended on August 26th, 1898.

Acts may be cited as the Supreme Court Acts, 1896 to 1898. The Act provides that lands levied on under writ of execution issued out of court shall be deemed to be in the legal possession of the Provost Marshal of the colony; and on a sale thereof his conveyance to a purchaser shall operate as a bar to all estates existing at the time of sale, in respect of which the parties entitled, being of full age and not being under coverture, beyond seas or subject to other legal disability, had not given notice in writing to the Provost Marshal of their claim. Power is given to the court to direct the execution of conveyances by the proper parties, and, upon their failing, by such persons as it may nominate for that purpose; and the conveyance so executed shall for all purposes be available as if it had been executed by the persons originally directed.

Investments of Public Moneys (No. 25).—The Investment of Public Moneys Act, 1898, authorises the Governor in Council to invest surplus moneys in the Public Treasury upon Government securities of the United Kingdom or of the United States or any British possession.

Larceny (No. 26).—The Larceny Amendment Act, 1898, empowers the court, in the case of young male offenders, convicted a second time, to order them a private whipping, instead of or in addition to imprisonment.

Prevention of Crime (No. 29).—The Fruit-Dealers Act, 1898, makes it compulsory on all dealers in pine-apples, oranges, grape-fruit, and other citrus fruits to keep a register book of all particulars relating to the purchase of fruits and the addresses of the vendors. No fruit is to be purchased of any person under sixteen years of age. The register book is to be open to inspection by the police. The dealer's name is to be registered at the police station. Constables may stop persons in possession of fruits, and enquire as to their right to possession, and on proceedings under the Act the *onus probandi* is to be on the person in whose possession the fruit is found, to show right of legal possession.

2. BARBADOS.[1]

[*Contributed by* Wallwyn P. B. Shepheard, Esq.]

Acts passed—24.

Barbados Railway Company (No. 2).—This Act empowers the Court of Chancery of Barbados to order and direct a sale, by the Master of the said Court, of the Barbados Railway Company's undertaking, and its property and assets in Barbados, exclusive of the Government subsidy payable under local Acts.

Public Health (No. 3).—The Public Health Act, 1898, consolidates and amends the Acts relating to public health. The Governor is empowered, by commission under the seal of Barbados, with the consent of the Executive

[1] The Session 61 Vict. ended on December 31st, 1898.

Committee, to appoint one general Board of Health: this board to have power to make rules and regulations for promoting the public health; to establish dispensaries in the event of epidemics of cholera, small-pox, or yellow fever; to close burial-grounds; to take possession of public elementary schools as temporary hospitals.

The vestry of each parish in Barbados is to appoint annually commissioners of health for the parish. The commissioners are to appoint sanitary inspectors, make bylaws, and enforce the regulations of the Board of Health and the bylaws. The Act contains provisions for ensuring cleanliness in all towns and villages; the removal of nuisances; the inspection of houses and places, whether public or private, and the removal of offensive matter therein; the inspection of meat, fish, and other food, with power to order the destruction of such as may be unfit for food.

The Act requires and regulates the notification of infectious diseases and the necessary works of sanitation consequent thereon, and inflicts penalties for failure to comply with the requirements under the Act. Provisions for stopping the spread of infection in public places or vehicles by persons suffering from cholera, yellow fever, diphtheria, or small-pox, are enforceable under the Act. The Board of Health are empowered to make regulations as to the landing of animals and carcases.

In and within two miles of the city of Bridgetown small tenantries are not to be created without the approval by the commissioners of the plans showing the roads and surface drainage of the building plots. The Act repeals the existing Public Health Acts.

Public Roadways (No. 6).—The West Indian Oil Syndicate (Limited) Act empowers the company to lay pipes under the public roadways, for collecting and conducting the mineral oil from the borings of the company. The powers conferred on the company are to lapse if not exercised within two years from the passing of the Act, or if the pipes when laid are not used for two years.

Bankruptcy (No. 7).—The Bankruptcy (Amendment) Act, 1898, enables the Official Assignee authorised to sell the real estate of a bankrupt to give a valid receipt for the purchase money, and to pass by his conveyance the real estate expressed to be conveyed, freed from all liens and encumbrances of all persons, including Crown or parochial authorities, save and except such as are specified in such conveyance, and subject to which the real estate is expressed to be conveyed. The conveyance by the Official Assignee is to vest in the purchaser the real estate conveyed as effectually as if the persons having any lien or security on the lands had been made parties to and had executed the conveyance. The Act shall apply to all property hereafter conveyed by the Official Assignee, whether the bankruptcy and the sale be either before or after the Act.

Merchant Shipping (No. 12).—The Merchant Shipping (Amendment) Act, 1898, amends and is consolidated with the principal Act of 1891. The

Governor is empowered to appoint surveyors of ships within Barbados for the purposes of this Act, or of the Imperial Merchant Shipping Act of 1894. The duties of the surveyors of ships are set out in terms similar to those specified in the Imperial Act of 1894. Powers to prosecute persons sending unseaworthy ships to sea, and to detain unsafe ships in port, are given in terms similar to those contained in the Imperial Act. The Court of Survey shall consist of the police magistrate for the district, sitting with two nautical assessors to be appointed by the Governor. The powers and procedure of the Court of Survey are regulated by the Act.

Franchise (No. 13).—The Representation of the People (Amendment) Act, 1898, amends and is consolidated with the principal Act of 1891. The police magistrates in the various electoral districts are appointed the registering officers, and the conditions as to the registration of voters in the election of members of the general assembly of Barbados are set forth in the Act. Provisions are made by the Act for the preparation and revision of the lists of voters, and for the appeal from a decision of the revising court to the chief justice of the island.

Chancery Jurisdiction (No. 24).—The Chancery (Amendment) Act, 1898, amends and is consolidated with the principal Act of 1891. The Act gives power to the Vice-Chancellor[1] of the Court of Chancery to award costs in all proceedings before that Court and in the administration of estates and trusts, on the same principles as are acted on by the Supreme Court of Judicature in England. It enables the plaintiff, on default of appearance and answer by the defendant after the expiration of the time allowed for answering, to apply to the court for such decree or order as he may think himself entitled to.

In suits instituted by a mortgagee upon motion by the plaintiff, at the request of the majority in value of the persons holding prior mortgages, the receiver already appointed may be discharged, and the person selected by such majority appointed by the court in his stead.

Where land ordered by the court to be sold remains unsold for twelve months, the Master in Chancery, on the application of the holder of any lien or certificate under the Agricultural Aids Act, shall submit the land for sale during the next twelve months at four-fifths of the last upset price, and so on from time to time until such land be sold. Any offer for the purchase of land unsold for three months at a less price than the upset price may be received by the master; and land unsold for four years may be sold without reserve, after notice by public advertisement and otherwise, as therein provided, if for the last three years it has failed to pay the cost of cultivation and management.

[1] By the Principal Act the Chief Judge of Barbados is the Vice-Chancellor of the Chancery Court.

3. BERMUDA.

[*Contributed by* REGINALD GRAY, ESQ.]

Acts passed—26.

Criminal Law.—No. 1. The Criminal Law Amendment Act, 1898. S. 1 makes an indecent assault a misdemeanour punishable with imprisonment not exceeding three years, with or without hard labour. S. 2 makes an attempt to commit a rape, or an assault on a female with intent to commit a rape, a misdemeanour punishable with imprisonment not exceeding four years, with or without hard labour. S. 3 renders a person charged with an offence under s. 2, and the wife of such person, a competent, but not a compellable, witness, thus remedying a defect in the existing Act, which was based on 48 & 49 Vict., No. 69, s. 20. S. 4 provides that males convicted of certain offences may be whipped. S. 5 provides that where a male under sixteen is convicted summarily before justices of the peace, they may, either in addition to or instead of sentencing the offender to imprisonment, order him to be privately whipped by a constable, or in the presence of a constable by some other person appointed by the justices, the parent or guardian of the offender being allowed to be present if desired.

Immigration (No. 3).—The Immigration Act, 1898, was passed with a view to prevent, as far as practicable, the immigration of persons likely to become a public charge. The master of a "passenger ship," as defined by the Act, is required to deliver to the immigration officer a correct list of such of the passengers as the Act applies to, and such passengers are precluded from leaving the ship until the provisions of the Act are complied with. The immigration officer before granting such permission is to go on board such ship and examine into the condition of such passenger, and if such passenger is found to have been a convict, or to be lunatic or idiot, or deaf or dumb, or blind or infirm, or unable to take proper care of himself or herself, or likely to become chargeable to the Government of these islands, the immigration officer is not to allow him to land (s. 7). The immigration officer may further require a passenger to satisfy him that he is in possession of at least £5 (s. 8). Permission to land may be given upon a bond of indemnity against the passenger becoming chargeable being given by two persons approved by the officer (s. 9).

Cable Company (No. 4).—This Act facilitates the operations of the Direct West India Cable Company, Limited, and conferred on it certain privileges.

Quarantine (No. 12).—The Quarantine Act, 1898, was the first Act prepared under the Statute Law Consolidation Act, 1897, and consolidated five previous Acts relating to this subject.

Revenue (No. 16).—The Revenue Act, 1898, contains one hundred

and thirty-nine sections and three schedules, and consolidates eleven Acts dealing with the collection of the revenue.

Synod (No. 17).—The Synod Act, 1898. Under an Act passed in 1878 the Synod of the Church of England was incorporated, and its constitution, which was adopted at a public meeting of members of the Church, was confirmed. This constitution contained a provision prohibiting the Synod from making any alteration in its constitution or declaration of principles. Experience had proved this restriction to be undesirable; and by the above Act the Synod is empowered to amend its constitution on complying with the requirements of the Act.

Conveyancing (No. 18).—The title of this Act is the Married Women's Conveyances Act, 1898. Under the previous law it was necessary to the validity of a deed executed by a married woman conveying her real estate that such deed should be recorded at length in the Secretary's Office within a limited period after execution. This Act substitutes the registration of a memorandum of the deed containing the date, the names of the parties, the description of the property, and the nature of the estate or interest conveyed.

Ballot (No. 22).—The Ballot Act, 1898, provides that printed directions to be observed by voters shall be posted up in and about the room or place set apart for balloting purposes, and substitutes a simpler form of ballot paper for that previously in use.

Pilotage (No. 24).—The Pilot Act, 1898, consolidates and amends seven Acts previously in force on the subject. It provides (1) for the constitution and powers of the Board of Pilot Commissioners; (2) for the issue of pilot licenses; (3) the rates of pilotage; (4) the rights of first class pilots; (5) the rights of, and penalties on, pilots; (6) provisions as to buoys and poles; (7) marking and numbering of boats; (8) restrictions as to use of steamboats for piloting; (9) duties of, and penalties on masters of ships; (10) enquiries by board; (11) procedure on prosecutions or complaints; (12) appeals; and (13) miscellaneous matters. The principal change in the law as it previously existed was the conferring on any pilot holding a first class license the privilege of piloting to sea a ship of which he had been the pilot when inward bound. Under the former Acts the pilot first within hail of an inward ship had the right to pilot her into port; but the master could employ any pilot he pleased to take her to sea again.

Criminal Law (No. 25).—The offences against the Property Act, 1898, adopts some of the provisions of the English statute law not previously in force in Bermuda, chiefly with regard to embezzlement and kindred offences.

Married Women (No. 26).—The Married Women's Protection Act, 1898, amends an Act of 1894 on the same subject, adopting portions of the Imperial Statute, 58 & 59 Vict., No. 39.

4. BRITISH GUIANA.[1]

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—26.

Constitution (No. 1).—The British Guiana Constitution Ordinances Amendment Ordinance, 1898, amends the Constitution Ordinance of 1891 and the Ballot Ordinance of 1896. It provides for each electoral district a system of annual registration of persons entitled to vote at the election of a member of the Court of Policy, or of a Financial Representative for such electoral district or division. The procedure for making up and revising the list of voters is regulated by this Ordinance, as well as the proceedings before the revising barristers appointed by the Governor pursuant to the Ordinance. The duties of the returning officers at the polling stations are defined.

Police (No. 2).—The Police Ordinance, 1891, Amendment Ordinance, 1898, defines and sets out the form of oath to be sworn by non-commissioned officers and constables on their appointment. It provides that any non-commissioned officer or constable against whom any complaint of the commission of an offence punishable on summary conviction, or of an indictable offence, has been laid, may, pending his trial, be suspended by the Governor from his pay and duty; and gives power to the Governor, if the complaint be dismissed or the officer be acquitted, to direct payment of the whole or any portion of the pay stopped. Powers are given to the Governor to order any non-commissioned officer or constable disabled by infirmity to be superannuated, and to receive, if he be over fifty-five years of age and has served ten years in the force, a yearly pension not exceeding one-sixtieth of the average salary for the three years preceding his retirement for each completed year of service up to a limit of thirty years.

Spirits (No. 3).—The Spirits Ordinance, 1890, Amendment Ordinance, 1898, gives powers to police and the customs officers to arrest offenders in certain cases without warrant, and bring them, as soon as practicable, before a stipendiary magistrate. Penalties by fine or imprisonment are provided by amending sections of the principal Ordinance. The procedure against distillers, dealers, or retailers of spirits for offences under the principal Ordinance are regulated; and persons who manufacture molasses are to keep a record on the sugar estates of the sales of the molasses, and to give inspection of such record to the revenue or police officers at all times. Prohibitions against persons, not being distillers or licensees, having in their possession more than one gallon of low wines, etc., or two quarts of rum, are contained in this Ordinance. Powers to issue search warrants and seize rum in unlawful possession of any person are given.

[1] The Session 60 Vict. ended December 31st, 1898.

The general effect of this amending Ordinance is to increase the stringency of the revenue regulations relating to the manufacture and sale of rum.

Estate Duty (No. 4).—The Estate Duty Ordinance, 1898, imposes death duties to be collected by means of stamps in accordance with the Stamp Duties' Management Ordinance, 1888.

Administration.—The estate duty is placed under the care and management of the Receiver-General.

Subjects of Duty.—The estate duty is imposed on—

(*a*) Property of which the deceased was at death competent to dispose.

(*b*) Property taken as a *donatio mortis causâ* made by the deceased, or by gift not made twelve months before death by the deceased, or by gift whenever made unaccompanied by immediate, exclusive, and permanent possession and enjoyment by the donee.

(*c*) Property of the deceased vested in himself and any other person jointly, whereof the beneficial interest therein passes by survivorship on his death to such other person.

(*d*) Property passing by past or future disposition of the deceased, or by an instrument not taking effect as a will, whereby an interest in such property for life or a right of resumption is reserved to the disposer notwithstanding such instrument, may have been made for valuable consideration.

(*e*) Money received under a policy of insurance effected by the deceased on his life, and kept up by him for the benefit of a donee.

Provisions marked (*c*) or (*d*) in this section are not to apply to any property disposed of for full valuable consideration, but such consideration is subject to the same liability in respect of duty as the property disposed of was subject. The term "property" includes immovable and movable property rights and effects situate in the colony, and movable property elsewhere and wherever situated if the deceased person be at his death domiciled in the colony. Movable property on which a death duty is payable in the United Kingdom or any British possession is exempt from the duty under this Ordinance. Provisions as to the deduction of debts and funeral expenses, and as to the priority of the charge of duty, the liability of heirs and executors for the inventory of property, and payment of the duty, and as to assessment of the duty by the Receiver-general are contained in this Ordinance.

Taxation (No. 6).—The Ways and Means Resolutions Ordinance, 1898, makes any resolution imposing, increasing, or reducing taxes, customs duties, or imports of any kind passed by the Combined Court of the colony immediately operative, and such taxes and duties may at once be demanded and recovered.

Customs Duties (No. 7).—The Customs Duties Ordinance, 1898, imposes on the goods, wares, and merchandise enumerated in the 1st Schedule of the Ordinances on importation into the colony, the specific duties therein

fixed, and on all other goods, etc., the *ad valorem* duty of ten per cent., and exempts, by a 2nd Schedule, from taxation the goods therein specified. Drawbacks of the duties paid are allowed on goods exported or supplied to her Majesty's ships arriving in the colony. The Ordinance continues in force until March 31st, 1899.

Land Tax (No. 8).—The Tax Ordinance, 1898, imposes an acreage tax of two and a half dollars on each acre of plantations of more than fifty acres under cane cultivation, and of two cents. on each acre empoldered, and of three cents. on each acre not under cultivation.

Revenue Duties.—Tonnage duties on shipping, rum and spirit duties, stamp duties, license duties for various trades and occupations, and for the use of schooners and other craft, carriages, horses, etc., are imposed.

Title to Land (No. 9).—The Companies Clauses (Completion of Titles) Ordinance, 1898, is incorporated with the Companies' Clauses and Powers Consolidation Ordinance of 1846, referred to as the principal Ordinance.[1] It enables transports by the owner to the promoters of the undertaking of lands forming parts of *side lines*, *original side lines*, or *company paths*, pursuant to a plan showing the situation and extent of the land proposed to be transported, to be recorded in the Government Land Department, and certified as approved by the Crown surveyor.

Crown Lands (No. 10).—The Crown Lands and Government Land Department Ordinances Amendment Ordinance, 1898, empowers the Governor in the name of her Majesty—

(1) to make grants of Crown lands;
(2) to issue licenses for the occupation of Crown lands for the purpose of agriculture, cutting wood, and other purposes beneficial to occupier;
(3) to give permission to occupy the land for such purposes without exclusive right to occupy any specific part thereof.

Such licenses or permissions not to authorise the taking of minerals. No right to take minerals is to arise on a grant or a sale of Crown lands; but all minerals are to remain the absolute property of her Majesty.

Pauper Immigrants (No. 11).—The Destitute and Criminal Immigrants Regulation Ordinance, 1896, Amendment Ordinance, 1898, is consolidated with the principal Ordinance, which it amends, by declaring that any person rescued from any ship and brought direct to the colony shall not be subject to the disabilities as to landing imposed on a destitute immigrant by the principal Ordinance. It provides for the landing from foreign ships of seamen or stowaways, upon the consular officer of the country to which the ship belongs undertaking to maintain such seamen or stowaways until they can be sent away from the colony. Power is given for the arrest and re-shipment of destitute immigrants.

[1] The principal Ordinance of 1846 regulated the constitution of joint stock companies for carrying on undertakings of a public nature, and authorised the taking of lands for such purpose.

Registration of Births and Deaths (No. 13).—The Registration of Births and Deaths Ordinance, 1868, Amendment Ordinance, 1898, empowers the Governor to appoint a Registrar-General of Births and Deaths in the colony.

Constitution (No. 16).—The British Guiana Constitution Ordinance, 1891, Amendment Ordinance, 1898, prohibits members of the Court of Policy or of the Combined Court from voting on any question in which he has a direct personal pecuniary interest.

Companies (No. 21).—The Companies Ordinance, 1898, consolidates and amends the law relating to the incorporation, regulation, and winding-up of trading companies and other associations. The provisions of the Imperial Companies Acts of 1862, 1867, 1877, 1879, 1880, and 1890 are more or less embodied, whilst the Ordinance provides for the establishment of branch registers of members in the United Kingdom or in any British colony, and thus embodies the principle of the Imperial Act of 1883 authorising companies to keep local registers of their members in British colonies. The Ordinance contains two hundred and fifty sections and three schedules containing regulations for management of a company limited by shares (Table A of the Imperial Act of 1862), tables of fees, forms of memorandum and articles of association and regulations to be observed at meetings of creditors and contributaries.

Criminal Law (No. 22).—The Summary Conviction Offenders Ordinance, 1893, Amendment Ordinance, 1898, amends the principal Ordinance in respect of the crime of stealing provisions growing on any land, whether open or enclosed, by giving power to the court to order, in cases where the crime has been committed under circumstances which aggravate the offence, flogging as well as imprisonment.

Bicycles.—The Ordinance also regulates the riding of bicycles, etc., along public roads or streets.

Taxation of Land (No. 23).—The Acreage Tax Ordinance, 1898, repeals a like Ordinance of 1880, and makes it compulsory upon the owners of all lands subject to acreage tax to furnish twice a year returns in the form required of the acreage, and the purpose for which it is cultivated or occupied.

5. BRITISH HONDURAS.

[*Contributed by* H. L. Ormsby, Esq.]

Ordinances—14.

Fire and Accident Enquiries.—Ordinance No. 1 of 1898 (the Fires and Other Occurrences' Enquiry Ordinance, 1898) provides for enquiries by district commissioners into cases of fires or occurrences causing serious injury to person or property.

Insurance.—Ordinance No. 5 of 1898 (the Insurance Ordinance, 1898)

deals with contracts of insurance except fire or marine. S. 4 provides that the Governor in Council may require security from insurers.

Burial.—Ordinance No. 6 of 1898 permits burial of Roman Catholic bishops in the cathedral of Belize.

Quarantine.—Ordinance No. 9 of 1898 amends Ordinance No. 26 of 1894 as to persons arriving in the colony from places infected with cholera or yellow fever.

Ordinance No. 10 of 1898 (the Bills of Health Ordinance, 1898) gives power to the Governor in Council to make rules as to the granting of bills of health.

Crown Lands.—Ordinance No. 11 of 1898 makes Crown rents recoverable on summary conviction.

Administration.—Ordinance No. 12 of 1898 applies Ordinance No. 5 of 1888 to Colonial probates as if granted in the United Kingdom.

6. JAMAICA.

[*Contributed by* Albert Gray, Esq.]

Acts passed—41.

Of the forty-one Acts passed in 1898 very few are of such a character as to be of interest outside the colony. Some, such as those relating to the Kingston General Commissioners, the West India Cable Company, the Kingston Waterworks, etc., are private Acts. Others effect small amendments of existing Acts. Others, again, such as the Succession Duty Act, the Spirit License Act, are measures drawn on well-known lines.

Fetish.—In the Obeah Act (No. 5) we find ourselves in the realm of African fetish As long ago as 1856 Jamaica passed an Act "for the more effectual punishment of persons convicted of dealing in and practising obeah and myalism": indeed, there appears to have been a similar Act in 1841. Other Acts on the same subject were passed in 1858, 1892, and 1893.

The Act is to the same effect as the *Poro* Act of Sierra Leone noticed in the "Review of Legislation" last year.[1] A person practising obeah is defined as "any person who to effect any fraudulent or unlawful purpose, or for gain, or for the purpose of frightening any person, uses or pretends to use any occult means, or pretends to possess any supernatural power or knowledge." A person practising obeah is liable to twelve months' imprisonment, and any person consulting such practitioner is liable to six months. In both cases whipping may be part of the sentence. Clauses are added for the suppression of obeah literature and for searching for things used in connection with the prohibited craft. "Myalism" seems to be "obeah" under another name.

[1] *Journal*, March, 1899, p. 130.

Jury Law.—In regard to the consolidation and amendment of the law of juries (No. 13) it may be noted with respect to the number of jurors that the law of Jamaica is as follows: "In all cases of treason and capital felony the jury shall consist of twelve persons, and in all cases of felony not capital and of misdemeanor the jury shall consist of seven; but the verdict in all criminal cases shall be unanimous. In all civil cases the jury, whether special or common, shall consist of seven persons, and the verdict shall be that of five jurors at the least." Likewise in respect of coroners' inquests, there must be a jury of not less than seven persons, nor more than thirteen, of whom seven at least must concur to give a verdict.

Agricultural Tenants' Protection.—All tenants whose tenancy is determined by notice to quit may, on being so removed, recover from the landlord the value of all permanent improvements of the land by the planting of certain specified trees, etc., such as coffee, cocoanut, cocoa, etc. (Act No. 19).

Protection of Girls.—The law as to offences against girls of twelve to fourteen with consent is amended by the addition of a proviso that it shall be a sufficient defence if the accused proves that he had reasonable cause to believe that the girl was of or above the age of fourteen; and every prosecution for an offence of this nature must be commenced within three months.

Cayman Islands.—Power is taken by Act No. 34 for the Governor of Jamaica to appoint a commissioner of the Cayman Islands. His salary is not to exceed £300. He is to preside in the grand court, and to exercise alone all the powers hitherto vested in three justices of the peace.

Resident Magistrates.—The law as to resident magistrates is amended by Act No. 36. There is a resident magistrate's court for each of the fourteen parishes of the island, and the Governor may appoint so many resident magistrates, not exceeding fourteen nor less than nine, as he may think fit.

7. TRINIDAD AND TOBAGO.[1]

[*Contributed by* Wallwyn P. B. Shepheard, Esq.]

Ordinances—36.

Botanic Gardens (No. 2).—The Royal Botanic Gardens Ordinance, 1898, is consolidated with a like Ordinance of 1894 (the principal Ordinance), and extends the provisions of the principal Ordinance to lands acquired or appropriated, with the sanction of the Governor and council, for experimental cultivation.

Reformatory Schools (No. 4).—The Reformatory Schools Ordinance,

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council, and private and public Ordinances are numbered together by reference to the calendar year.

1898, amends and is consolidated with a like Ordinance of 1890. Imprisonment with hard labour in the royal gaol for a term of not exceeding three months may at the discretion of the inspector be inflicted on youthful offenders upon their conviction before him of offences whilst inmates of the school or for escaping therefrom.

Limitation of Actions (No 5).—The Crown Suits Limitation Ordinance, 1898, does not extend to actions, informations, or other suits instituted by the Crown previous to the passing of the Ordinance; but from and after the passing of the Ordinance the Crown is restrained from such actions, etc., against any person or persons in respect of lands, tenements, rents, or hereditaments which he or they or their ancestors or predecessors in title have held for forty years before action brought. But the Crown or a subsequent grantee is not thereby prevented from showing in an action for possession, etc., title in the Crown or such grantee by the expiration or determination within sixteen years before such action brought of the interest of some previous grantee by virtue of which any person has been in possession forty years or more, but the estate thereunder has within such sixteen years ceased or determined. In any such action by the Crown or a plaintiff claiming under a grant from the Crown within sixteen years before action brought, the defendant may by previous notice give evidence at the trial of exclusive possession by him and his predecessor in title for sixteen years before action, and thereupon the Crown or such plaintiff shall be put to proof of title within and subject to the limitations of the Ordinance.

Usury (No. 6).—The Usury Ordinance, 1898, repeals as to the colony orders in council relating to usury of 1816 and 1845, and the local Ordinances of 1846 and 1859, and from the commencement of the Ordinance declares that no contracts of loan shall be void by reason of any interest thereon, nor persons lending money as aforesaid be liable to any penalty. After twelve months from date of interest falling due, actions are barred in respect of interest on loans under £20 exceeding the rate of twenty-five per cent. per annum. Power is vested in the judge in cases of loans under £20 at twenty-five per cent. interest to limit at his discretion executions on judgments to such sum as will reduce the amount recovered to the amount of the debt and interest at twenty-five per cent., and any excess of the debt over such reduced amount recovered shall not be thereafter recoverable, and the discretion of the judge is exercisable without appeal.

Registrar-General (No. 8).—The Registrar-General Amendment Ordinance, 1898, empowers the Governor and Legislative Council to determine the salary of the Registrar-General, and provides for the appointment of a barrister or certificated conveyancer to act as his legal adviser.

Labour Contracts (No. 11).—The Foreign Labour Contract Ordinance, 1898, amends and is consolidated with the principal Ordinance of 1894, and imposes penalties upon any persons inducing or hiring persons to leave the colony for any employment as labourers in foreign countries.

Evidence as to Births, etc. (No. 12).—The Births, Deaths, and Marriages' Evidence Ordinance, 1898, makes certified copies of the entries in registers of births, deaths, or marriages by persons having legal custody of the register in any place in her Majesty's dominions *primâ-facie* evidence of the fact of the birth, death, or marriage thereby certified. The authentication of the signature of the person signing such certificate is to be under the hand and seal of a Notary Public, or under the hand of the Registrar-General or Superintendent Registrar of Births, etc., or member of the High Court or Supreme Court, or under the seal of some court of civil jurisdiction in the country, colony, etc., in which such certified copy shall have been issued.

Savings Banks (No. 13).—The Savings Bank Amendment Ordinance, 1898, amends and is consolidated with like Ordinances of 1889 to 1896. Information as to deposits when directed to be given by a judge of the Supreme Court or of a district or petty civil court, shall be given by the officers of the bank summoned as witnesses in the proceedings before such judge. The prohibition of payment of interest on deposits exceeding £500 in the Ordinance of 1896 shall be construed to prohibit payment of interest on any part of such deposits until the same are reduced to £500 or under.

Public Waterworks (No. 14).—The District Waterworks Ordinance, 1898, enables the Governor by a provisional order, to be approved by the Legislative Council, to set in force the provisions of the Ordinance for the construction of district waterworks; and upon the passing of such provisional order the necessary works are to be proceeded with in accordance with such order and the provisions in the Ordinance. Loans for the purpose of meeting the costs are authorised and made repayable by instalments spread over fifty years. Powers to levy rates for the regulation and protection of the public water supply are contained in the Ordinance.

Land for Public Purposes (No. 15).—The Land Acquisition Ordinance, 1898, enacts that upon the appropriation by the Legislative Council of moneys for public works or purposes, the Director of Public Works may enter and survey the lands within which such works are to be situated, and thereupon proceed to acquire such portion thereof as may be necessary for the works by notice and otherwise, in accordance with the procedure and subject to the rights of compensation to the owners provided by the Ordinance. All land so to be acquired shall, after notice by the Governor in the royal *Gazette* of its appropriation for the public purposes named therein, become vested in the Crown.

The Ordinance regulates procedure in compensation cases and for payment of money into court.

Immigration (No. 16).—The Immigrants' Return Passage Ordinance, 1898, provides that every immigrant arriving after the commencement of the Ordinance is on the conditions contained in the Immigration Ordinance of 1896 to be entitled to be provided with a passage back to the port whence he sailed for the colony on payment of one-half instead of one-fourth of the

passage money in the case of males, and of one-third instead of one-sixth in the case of females.

Debtors (No. 18).—The Debtors Ordinance Amendment Ordinance, 1898, amends the principal Ordinance (the Debtors Ordinance, 1880) by giving powers to the inferior courts of civil jurisdiction to cause judgment summonses to be served, orders for commitment to be issued, and warrants of commitment to be executed for debts not exceeding £10 and costs, in respect of debtors outside the district for which the court has jurisdiction.

Absconding Debtors (No. 20).—The Absconding Debtors Ordinance, 1898, gives power to a judge of the Supreme Court to issue a warrant for the arrest of debtors preparing to quit the colony. Such warrants not to be issued against married women or infants, nor in respect of debts less than £10, or due and owing for more than two years, and not until action for recovery of debt has commenced. Provisions as to procedure on arrest, committals to gaol, etc., are contained in the Ordinance.

Criminal Law (No. 21).—The Summary Conviction Offences (Procedure) Ordinance, 1898, is consolidated with like Ordinances of 1895 and 1897, and amends these Ordinances by giving power to the Attorney-General in charge of indictable offences before stipendiary justices to require the court to adjourn the case or send it for trial at the criminal sessions.

Hospitals (No. 24).—The Ordinance to amend and consolidate the provisions for the establishment, maintenance, and management of hospitals, asylums, and other institutions for the relief of the sick and destitute poor gives powers to the local government for the establishment of hospitals, lunatic asylums, dispensaries, soup-kitchens, and other forms of out-door relief for the sick or destitute poor. Power to segregate persons sick of contagious or infectious diseases, and apprehend vagrants so afflicted, are contained in the Ordinance.

The Ordinance repeals a like Ordinance of 1895 and the Hospitals Ordinance of 1896 and 1897.

Pensions for Public Officials (No. 25).—The Public Service Widows and Orphans' Fund Ordinance, 1898, came into force on October 1st, 1898. It regulates the administration of the Civil Service Widows and Orphans' Fund then in existence under the provisions of various Ordinances which are repealed. The Ordinance contains fifty-four sections and a schedule of actuarial tables, etc.

Recovery of Debts (No. 26).—The Remedies of Creditors Ordinance, 1898, is consolidated with and amends a like Ordinance of 1845. The Ordinance enables judgments and orders of the Supreme Court to be enforced by executions against and sale of the personal goods and chattels of the debtor other than chattel interest in land; and, after giving credit for proceeds realised, any sum still recoverable shall entitle the creditor to an order for the sale of the beneficial interest of the debtor in any lands and hereditaments within the colony. The Ordinance contains fifty-five sections,

and among other provisions in the procedure for recovery of debts by the sale, under order of court, of lands or interest therein of the debtor, are provisions for examination of title by barristers, or conveyancers to be appointed for that purpose by the judge, and for obtaining an indefeasible title to lands purchased under the Ordinance.

Married Women.—By this Ordinance the separate estate of married women debtors, legal or equitable, as to which no present restraint on anticipation exists, may be made available by creditors with judgments under this Ordinance against the separate estates of such married women as if they were discovert and seised in their own right.

Mortgagors.—In the case of mortgages the debtor's equity of redemption, subject to the mortgages, may be sold, or a receiver appointed, subject to and without prejudice to the rights of the mortgagees, or at the option of the creditor an order of court may be made for the transfer to him of the debtor's interest, with possession on the footing of a puisne incumbrancer for the amount of his debt and costs; but no order affecting the interest of a mortgagee in possession shall be made except upon terms of the judgment creditor redeeming in due course as a puisne incumbrancer, and on payment of the costs of the mortgagee in possession.

Medical Practitioners (No. 28).—The Medical Ordinance, 1898, amends and consolidates the law with regard to the constitution of the Medical Board of Trinidad, the practice of medicine and surgery, and the sale of drugs. The registration on the register of the medical board under separate lists of medical practitioners, dentists, druggists, and midwives is provided for. The Ordinance contains sixty-six sections, and among various provisions are contained restrictions as to the sale of poisons and stale or unwholesome drugs.

Judicature (Tobago) (No. 34).—The Judicature (Tobago) Ordinance, 1898, is consolidated with the Judicature Ordinance, 1879, and provides for the holding of sittings of the Supreme Court in Tobago for the trial of criminal and civil cases, and for the hearing of appeals from the decisions of magistrates in Tobago.

Arbitrations (No. 35).—The Arbitration Ordinance, 1898, follows the Imperial Arbitration Act of 1889, omitting the section as to submissions to arbitration by official referees, but with power, as in the Imperial Act, for the court to refer cause or matter to a special referee.

8. WINDWARD ISLANDS.

(i) GRENADA.

[*Contributed by* H. L. Ormsby, Esq.]

Ordinances—9.

Petroleum.—Ordinance No. 1 of 1898 (the Inflammable Goods Amendment Ordinance, 1898) amends the Inflammable Goods Ordinance, 1891 (No. 11 of 1891). The Ordinance gives to the Governor in Council power to authorise and regulate the importation of volatile petroleum for fuel.

Parochial Board.—Ordinance No. 2 of 1898 (the Parochial Boards Amendment Ordinance, 1898) amends the Parochial Boards Ordinance, 1891. SS. 1 and 2 give power to the Governor by proclamation to alter number of persons required to constitute a board, and number of members to form a quorum. S. 3 provides for qualification of members. S. 4 deals with estimates of revenue and expenses of the boards.

Patent.—Ordinance No. 4 of 1898 (the Patents Ordinance, 1898) is practically an enactment of the provisions of the Imperial Statute, 46 & 47 Vict., No. 57 (the Patents, Designs, and Trademarks Act, 1883), so far as the same deals with patents; but the sections are in some cases in a different order, and there are minor variations to fit the enactment to colonial circumstances.

Landlord and Tenant.—Ordinance No. 5 of 1898 (the Landlord and Tenant Ordinance, 1898) amends the law of landlord and tenant. S. 1 enacts that no action is to be brought on accidental fire without express stipulation in that behalf. S. 2 enables the Court to make leases on behalf of infants. S. 3 requires a tenant to give notice to the landlord of any writ for recovery of the land. S. 4 provides for actions for use and occupation. SS. 5 and 6 enact that a license to do any act is not to prevent forfeiture for subsequent breach of covenant and license to one tenant, or as to part of land not to destroy right of re-entry against other lessees, or as to other land. S. 7 is interpretation. SS. 8-11 deal with reversions. S. 12 enacts that notice to remedy breach of covenant be given before re-entry. S. 13 prohibits fines for consent to underlet. SS. 14 and 15 deal with under-lessees. SS. 16-29 deal with distress, fraudulent removal, desertion of premises, etc. SS. 30 and 31 protect the goods of lodgers. S. 32 gives power to the Governor in Council to fix fees and expenses of distraints. S. 33 provides for action by landlord against bailiff for damages caused by wrongful acts of the latter. S. 34 defines timber.

(ii) ST. VINCENT.

[*Contributed by* H. L. Ormsby, Esq.]

Ordinances—13.

Supreme Court.—Ordinance No. 4 of 1898 (the Chief Justice Ordinance 1898) qualifies English and Irish barristers and Scotch advocates of five years' standing for the office of chief justice; provides for salary as assigned by Governor with consent of Legislative Council, and allows the acting Chief Justice to discharge duties of any other public office.

Patent.—Ordinance No. 5 of 1898 (the Patents Ordinance, 1898) is identical with the Grenada Ordinance (see above), except that it contains two sections (54 and 55) saving the prerogative of the Crown, and dealing with falsifications of the register.

License.—Ordinance No. 6 of 1898 (the Licenses Amendment Ordinance, 1898) amends the Ordinance of 1896 as to gun and boat licenses, and fixes the cost of retail licenses in Layou and retail country licenses at £5 half yearly.

Savings Bank.—Ordinance No. 8 of 1898 (the Savings Bank Ordinance, 1898) regulates the Government savings bank in the colony. S. 11 fixes the rate of interest at two and a half per cent. S. 12 limits deposits to £200, and interest bearing deposits to £100. S. 19 provides for payments for support of insane or incapacitated depositor; s. 20 for payment of deposits not exceeding £50 on death. S. 21 deals with payments on death under probate. S. 22 permits payment to illegitimate relatives. S. 28 provides for arbitration in case of disputes. S. 33 gives power to the Governor in Council to make savings bank rules.

Post Office.—Ordinance No. 11 of 1898 (the Post Office Ordinance, 1898). S. 2 enacts that shipmasters shall be compelled to receive and deliver mail-bags. S. 3 imposes a fine up to £100 or imprisonment up to six months on shipmasters tampering with mails. S. 4 provides for payments to shipmasters. S. 5 prohibits use of used stamps.

(iii) ST. LUCIA.

[*Contributed by* H. L. Ormsby, Esq.]

Ordinances—13.

Quarantine.—Ordinance No. 1 of 1898 (the Quarantine Ordinance, 1895, Amendment Ordinance, 1898) provides for procedure in case of death on board a vessel in quarantine.

Merchant Shipping.—Ordinance No. 2 of 1898 (the Distressed (St. Lucia) Seamen's Relief Ordinance, 1898) provides for the repayment to the Board

of Trade and the Shipwrecked Mariners Society and shipmasters of moneys expended in sending back to the colony distressed seamen.

Intoxicating Liquor.—Ordinance No. 6 of 1898 (the Liquor License Ordinance, 1886, Amendment Ordinance, 1898) provides (s. 3) for six classes of liquor licenses: (1) wholesale liquor licenses; (2) retail spirit licenses; (3) refreshment-house licenses; (4) occasional licenses; (5) bottle licenses; (6) hotel licenses: exempts licensed distillers from taking out licenses, and (with s. 12) fixes the fees on licenses. S. 4 restricts the sale of liquor in hotels to boarders and the quantities to be sold by wholesale licensees and distillers. S. 6 prohibits sale of spirits to soldiers. S. 7 exempts military canteens from the principal and amending Ordinances. S. 9 prohibits sale of spirits more than twenty-five per cent. under proof. SS. 10 and 11 restrict sales in vessels or in bond or not in accordance with Ordinances.

Solicitor.—Ordinance No. 9 of 1898 (the Legal Practitioners Ordinance, 1888, Amendment Ordinance, 1898) repeals the provision qualifying barristers and solicitors of any British colony to be admitted barristers of St. Lucia.

Land.—Ordinance No. 10 of 1898 (the Crown Grants Registration Ordinance, 1898) gives to the lodging of Crown grants with the Registrar of Deeds the effect of registration.

9. LEEWARD ISLANDS.

[*Contributed by* H. L. Ormsby, Esq.]

(i) GENERAL LEGISLATIVE COUNCIL.

Acts—12.

Legislative Council.—Act No. 1 of 1898 enacts that of the elective members of the General Legislative Council, four shall be taken from the unofficial members of the island council of Antigua, two from those of Dominica, and four from those of St. Christopher-Nevis, and that they shall be chosen by the unofficial members of those councils respectively.

Commissions of Enquiry.—Act No. 3 of 1898 prohibits the publication, without the authority of the Governor, of the proceedings of Commissions of Enquiry.

Police.—Act No. 5 of 1898 (the Police Act, 1898) deals with police officers to whom disciplinary powers have been deputed by the Inspector-General and with the punishments inflicted by them, and provides for the exercise of similar powers by district magistrates in the absence of the Inspector-General and inspectors.

Pauper Immigrants.—Act No. 6 of 1898 amends the previous legislation of 1891 and 1897 by repealing the latter Act and prescribing how notice is to be given to the shipmaster of the presence of a pauper immigrant on board. It also provides for the arrest of deserters, stowaways, and

immigrant paupers, and reduces the fine of £10 imposed by the Act of 1891 to £5.

Public Officers.—Act No. 7 of 1898 (the Public Officers' Guarantee Act, 1898) regulates the said fund.

Act No. 12 of 1898 (the Travelling Allowances Act, 1898) regulates allowances to public officers travelling on duty.

Land.—Act No. 8 of 1898 (the Title by Registration Amendment Act, 1898) enacts that land sold for default of payment of taxes is to be conveyed free of charge.

Executive Council.—Act No. 11 of 1898 (the Executive Councils (Evidence) Act, 1898) deals with enquiries before the federal and local executive councils. S. 2 provides for evidence upon oath. S. 3 makes false evidence perjury. SS. 4 and 5 gives power to compel the attendance of witnesses.

(ii) ANTIGUA.

Act and Ordinances—10.

Legislative Council.—Act No. 1 of 1898 provides for a legislative council consisting of eight official and eight unofficial members appointed by her Majesty or by the Governor duly authorised. Ordinance No. 10 of 1898 deals with the sessions of the council, and authorises the appointment of a clerk.

Taxes.—Ordinance No. 3 of 1898 reduces for one year the tax on cane-cultivated lands.

St. John's City.—Ordinance No. 5 regulates the local government of the city of St. John.

(iii) ST. CHRISTOPHER AND NEVIS.

Ordinances—18.

Roads.—Ordinance No. 3 of 1898 (the Roads (Anguilla) Ordinance, 1898) regulates the repair, etc., of roads in the island of Anguilla.

Licenses.—Ordinance No. 7 of 1898 prohibits dealing in tobacco without a license, and provides for the issue and duration of these licenses. It also requires tobacco dealers to keep a book in which all purchases by them of tobacco shall be entered.

Customs.—Ordinance No. 8 of 1898 requires the agents of steamships to be registered, and regulates the importation of goods by steamships.

Water.—Ordinance No. 9 of 1898 (the Watercourses Ordinance, 1898) gives the Legislative Council power to declare that particular watercourses are within the Ordinance, and places these under the control of the Surveyor of Roads and Superintendent of Public Works. It defines the

power of the surveyor, and gives to the Governor in Council power to make rules for the purposes of the Act.

Colonial Forces.—Ordinance No. 12 of 1898 (the Defence Force Ordinance of 1898) practically reproduces the Antigua Act, No. 2 of 1897 (the Defence Force Act, 1897). It repeals the Volunteer Ordinance of 1896, and constitutes and regulates a defence force of mounted infantry and infantry. It also provides for capitation grants, fines for offences, etc. By s. 29 the Governor, by proclamation, may call out the defence force for actual military service in case of war, invasion, or internal emergency. S. 30 applies the Army Act in such cases with certain modifications. SS. 32 and 33 provide for pensions and gratuities to persons wounded on actual military service, and for provision for families in certain cases. SS. 35-9 deal with contingent compulsory service. If the St. Christopher contingent is below the strength of two hundred and forty, or the mounted infantry below eighty, or the Nevis contingent below sixty, the Governor may by proclamation declare service compulsory in the respective island, on which the requisite number of persons shall be balloted for. S. 40 provides for annual training. Other sections protect the members of the corps, targets, butts, property, etc.

(iv) DOMINICA.

Acts of the Legislative Assembly, 4; Ordinances of the Legislative Council, 2.

Plants' Protection.—Act No. 3 of 1898 (the Plants' Protection Act, 1898) prohibits the importation of tea, seeds, and coffee-plants and uncured berries from certain places, and gives power to the Governor by proclamation to add to the lists of prohibitions and places.

Legislative Council.—Act No. 4 of 1898 (the Constitution Act, 1898) abrogates the Legislative Assembly, and creates a Legislative Council composed of six official and six non-official members, to be appointed by her Majesty or the Governor duly authorised.

(v) MONTSERRAT.

Ordinances—7.

Merchant Shipping: Passengers.—Ordinance No. 4 of 1898 (the Passengers Ordinance, 1898). By S. 3 the Ordinance is not to apply to any ship to which Part III. of the Imperial Merchant Shipping Act of 1894 applies. S. 4 limits the number of passengers to one for every ton of the ship's register. S. 5 provides for passenger lists to be lodged with the treasurer, whose certificate (s. 6) is to be obtained before the ship sails. S. 7 prohibits passenger-ships sailing between 6 p.m. and 6 a.m. without written leave of the treasurer. S. 9 prohibits open boats taking passengers

beyond the presidency. S. 10 imposes a fine not exceeding £100 for breach of the Ordinance.

Colonial Forces.—Ordinance No. 5 of 1898 (the Defence Force Ordinance of 1898) is practically identical with the similar St Christopher-Nevis Ordinance referred to above, with the exception that it does not contain provisions for contingent compulsory service.

Interpretation.—Ordinance No. 6 of 1898 (the Interpretation of Laws Ordinance, 1898) is on the Lines of the Imperial Interpretation Act. It defines "general legislature" to mean the Governor and General Legislative Council of the Leeward Islands.

(vi) VIRGIN ISLANDS.

Ordinances—3.

Public Health.—Ordinance No. 3 of 1898 (the Infectious Diseases Notification Ordinance, 1898) provides for the giving of notice by the head of a family and medical practitioners of the occurrence of infectious diseases. S. 2 imposes a penalty not exceeding £50 for neglect to give the notice. S. 5 gives power for a medical officer to be sent to visit suspected cases. By s. 6 a fine not exceeding £5 is imposed on obstructing a medical officer so sent.

X. MEDITERRANEAN COLONIES.

1. MALTA.

[*Contributed by* Edward Manson, Esq.]

Ordinances—13.

Commercial Fees.—No. 2 provides a tariff of commercial fees in the case of commissions, public brokers, surveyors, etc.

Diseased Animals (No. 9).—This empowers the head of the Government to make special regulations for the registration of all persons carrying on the trade of cow-keepers, sheep-, or goat-keepers, dairymen or purveyors of milk; for the inspection of cattle in dairies, cattle pens, or other places; and for prescribing the lighting, ventilation, cleansing, drainage, and water supply of dairies and cowsheds, and precautions generally to protect milk from infection.

Contagious Diseases (No. 10).—This Ordinance contains elaborate provisions for isolating persons infected with contagious or infectious diseases, and disinfecting their dwellings and clothes.

Public Meetings (No. 11).—This Ordinance provides for forty-eight hours' notice of any public meeting being given to the police, and empowers the police to fix the place for such meeting, which is not to be, in any

case, in the public streets or any other public place than that assigned by the police. If public demonstrations of discontent against the Government are made, or seditious cries uttered, the police may dissolve the meeting, or if any offences contemplated by the criminal laws shall be committed in the meeting.

Health (No. 13).—This contains regulations as to sanitary matters. Lodging-house keepers are every morning to cleanse the yards, stairs, and each room; to remove all filth; purify privies; provide basins, water, and towels; air sheets and blankets, etc. Keeping a brothel is made punishable with multa or three months' imprisonment. No prostitute is to live on ground-floor rooms. District government medical officers may enter and inspect. Midwives must be licensed, and are bound to call in a physician on certain being present.

2. CYPRUS.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts—29.

Mining (No. 1).—This Act removes the ambiguity in regard to mining concessions arising from the words, "for a period of ninety-nine years." This is now declared to mean, "for a period not exceeding ninety-nine years."

Judgments (No. 2).—Judgments charging the immovable property of the debtor are to remain in force for a period of two years only from the date of registration.

Seed Corn (No. 6).—This is a law to facilitate the lending of seed corn for agricultural purposes, and directs the procedure for repayment of seed corn advanced by the Receiver-General.

Game (No. 8).—A close time from February 15th till August 12th is fixed by this law for moufflon, hares, partridges, and francolins. S. 4 empowers the High Commissioner to order reservation of certain forests for the preservation of game; but this is not to affect any land comprised within a circle, with a radius of three English miles from any house or ancient monastery within the boundaries of any such reserved forest.

Weights and Measures (No. 14).—This requires every municipality to keep sufficient balances, weights, scales, and measures for the weighing and measuring of goods within the municipal limits, in a public place, in charge of a person to be termed the "municipal weigher" (s. 2). Whenever a sale of goods takes place within the limits of the municipality such goods are to be weighed or measured by the municipal weigher, and a fee paid by the vendor (s. 3). Notice is to be given, by the vendor or purchaser, to the municipality that the goods are ready to be weighed (s. 4). Weighing transactions are to be entered in a book. Other articles than goods may be weighed for a separate tariff (s. 6).

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NOTES.

A Library of Colonial Statutes.—A large number of colonial statutes for recent years have come to hand, and the majority of colonial governments have promised to forward them in future to the Society. They may be consulted by members of the Society at 8, Old Square, Lincoln's Inn; and they may, it is hoped, prove the nucleus of a library which is much needed—a complete collection, maintained up to a recent date, of the statutes of all colonies and dependencies. In the libraries of the Foreign, Colonial, and Indian Offices, the Inns of Court, and the Colonial Institute are to be found most of such statutes; but in none of these libraries are, it is believed, complete sets. It is needless to say that the value of such a collection depends largely on the promptness with which copies of new statutes are added to it. Whether the collection now being formed will have this merit rests with the many friends of the Society in the colonies.

Legislative Procedure in France.—The characteristic feature of French legislative procedure is the system of bureaus. The successive stages of an English public Bill, whether introduced by a member of the Government or by a private member, are in the House of Commons as follows: (1) Motion for leave to introduce. (2) Order giving leave, followed immediately by introduction, first reading, and order to print. (3) Second reading. (4) Reference to a committee, which may be either (*a*) a committee of the whole House, (*b*) one of the two Standing Committees on Law and Commerce, or (*c*) a select committee. (5) Consideration in committee. (6) Report by committee to the House. (7) If the Bill has been amended in committee, consideration of report. (8) Third reading. (9) Passing of the Bill. The normal procedure after second reading is reference to a committee of the whole House. When the House resolves itself into committee the Speaker leaves the chair, and his place is taken by the Chairman of Committees sitting at the table. The mace is removed, and the procedure is somewhat less formal. In the House of Commons substantial amendments may be made in committee and on the consideration of report, but not at any subsequent stage. In the House of Lords substantial amendments may be made at any stage after second reading. The House of Lords has no standing committees on law and commerce, but after a Bill has passed through committee of the whole House it is ordinarily referred to a standing committee, which meets once a week.

The procedure in the French Chamber of Deputies is entirely different. A distinction is drawn between Government Bills, which are called *projets*, and private members' Bills, which are called *propositions*. The latter are referred to a *commission d'initiation*, for the purpose of seeing whether they are regular in form. The next stage is reference to the bureaus. At the beginning of each session the Chamber, which consists of five hundred and seventy-six members, is divided by lot into eleven bureaus. The four first bureaus have fifty-three members each, the others fifty-two each. Each bureau appoints a president and secretary. When a Bill is "referred to the bureaus," each bureau considers it separately, and then appoints a "commissary" to represent the views of the bureau. The "commissaries," when united, constitute a commission. In ordinary cases each bureau appoints a single commissary; but the commission on the Budget Bill consists of thirty-three members, three appointed by each bureau. Each commission appoints a president and secretary, the latter being usually the junior member of the commission. They also choose a reporter (*rapporteur*), who is charged with the important duty of formulating the views of the commission and representing them to the House. The commissions usually sit twice a week, on Wednesday and Friday. Their sittings are not public; but the promoter of a Bill, if not a member of the commission to which it is referred, has a right of audience. The proceedings begin with a general discussion of the Bill. If the principle is approved, the articles or clauses are considered in detail, and may be amended. The proceedings terminate with the preparation and adoption of a report, which is not a mere formal document, but which states fully the arguments for and against the proposals adopted. The report is presented to the House, and forms the basis of subsequent discussions on the Bill. In these discussions the "reporter," as representative of the commission, takes the leading part in supporting its conclusions.

It is difficult for a foreigner to know how this procedure works in practice; but two or three points naturally occur to any one familiar with English parliamentary procedure: (1) The details of a Bill are more likely to receive effective examination before a small commission of eleven than in a committee of the whole House. (2) The practice of submitting a reasoned report on each Bill supplies valuable information which we too often desiderate in England. (3) The system is exposed to, and probably illustrates, the evils incidental to indirect elections. Each "commissary" represents the majority of the bureau which appointed him. The report of the commission represents the views of the majority of the "commissaries;" but it may well be that those views do not reflect, indeed they may materially differ from, the views of the majority of the whole House. (4) The promoter of a Bill, including the Government as promoter of Government measures, retains less control over it than under the English practice. The Finance Minister may see his budget completely transformed by the Budget Commission; and we have often been puzzled in England by the conflict

between the views of the Budget Commission and the views of the Government, and have found a difficulty in reconciling this conflict with the responsibility of the Government for national finance. And, lastly, the spokesman of the measure, as it emerges from the commission, appears to be, not its original promoter, but the reporter of the commission to which it was referred.

Hindoo Ladies as Witnesses.—The High Court of Calcutta has twice had before it lately the question of the immunity of Hindoo ladies to appear in court as witnesses under Art. 640 of the Indian Civil Code. That article provides that "women who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in court": and this statutory privilege is a proper concession to native feeling. The question raised in each of the cases before the court was whether a Hindoo lady (a *purdanashin*) who has been in the habit of appearing in public—going out, for instance, in her own carriage with its doors and *jheel-meels* open—and who is alleged to have no regard to the customs of her country and religion, is entitled to claim the privilege. The court in each case held that she was. Many a woman, as Trevelyan, J., pointed out, may have desired to taste the sweets of unsecluded life, and have gone out of the *purdah*—may have repented her act and desired to go back again. Is the court in such a case to keep her outside the *purdah* by compelling her to appear in public—for a temporary indiscretion to forfeit the privilege given her by law—perhaps entail on her excommunication, as happened in one of the above cases?

The Queensland New Criminal Code.—The colony of Queensland is making important progress with the task of codifying her criminal law. The Draft Criminal Code Bill, prepared by the Chief Justice, Sir Samuel Griffith, was referred at the end of last year to a Commission consisting of the Chief Justice as chairman and of ten other persons, mainly judges of the Supreme Court or of a district court. The Commission held twenty-six sittings in the months of March, April, and May of the present year, and has submitted to the Governor a revised version of the Draft Bill, with a report on its provisions. The Bill, which deals with procedure as well as with the substantive law, is a thorough and comprehensive piece of work, and merits the careful attention of those who are interested either in the criminal law or in the subject of codification. The commissioners are unanimous in thinking that it is expedient to enact a code of criminal law for the colony, and they are of opinion that the Draft Code comprises all the provisions which in the actual circumstances of the colony it is necessary or desirable to include in a code of criminal law. The report directs attention to certain points in which the common law amended the Draft Code submitted to them, and to certain changes which the code would make in the existing law. The Commission concurs with the draftsman of the code in the proposal to discontinue the term "felony," and to divide indictable

offences into crimes and misdemeanours. For a "crime" the offender may, in the absence of express provision to the contrary, be arrested without warrant. Murder is divided into two classes: wilful murder, when death is intended to be caused, and murder when that result is not intended. Stealing is so defined as to remove difficulties relating to possession. Under the definition in the Draft Code the essence of the offence is the fraudulent conversion of the property of another, whether it is or is not in his possession. The commissioners are divided in opinion on the question whether the punishment of death should be abolished for rape, but they are agreed in thinking that it should be abolished for robbery under arms, accompanied by wounding, when death does not ensue. It is proposed to extend the criminal law of Queensland to offences partially committed in the colony, by means of provisions which should be compared with those recently embodied in the Indian Penal Code. The provisions on the subject of sedition might also be compared with the new Indian law on the same subject. The revised draft is printed in such a form as to show clearly the variations from the original draft; and the alterations made as the results of discussions before the Commission are often significant and suggestive. The commissioners, after referring to a difference of opinion on two points, recommend the Draft Code as worthy of acceptance by Parliament, with or without such other of the amendments in the Draft Code which they have recommended without formally making them, or have suggested without recommendation. The Draft Code would enormously simplify the colonial law of crimes; it would repeal and supersede, in whole or in part, nearly one hundred Imperial statutes now in force in the colony and more than one hundred and forty colonial Acts.

Law Reform in Victoria.—From Melbourne we have received a valuable report on law reform, entitled "Report of a Royal Commission for Enquiry into the Means of Avoiding Unnecessary Delay and Expense, and of Making, Improvements in the Administration of Justice and in the Working of the Law." The Commission, appointed by the Governor, held fifty-eight sittings and examined many witnesses. The result is an elaborate report which is of considerable interest to English lawyers. Victoria long ago adopted the Judicature Acts; but some of the witnesses, including one or two judges, were in favour of returning to the Common Law Procedure Acts. The commissioners, however, do not agree with this suggestion. "Apart," they say, "from the question of the intrinsic merits of the Judicature system it is impracticable for other reasons to talk of reverting to the former procedure. The books on the old practice have long been out of use, and probably, to a considerable extent, out of print, and a new school of practitioners has arisen, familiar only with the Judicature system. It is, moreover, a very considerable advantage to have our procedure as nearly as possible similar to that of the English courts, in which, owing to the great mass of litigation in a dense population, nearly every point of difficulty is

investigated, and practitioners here have the advantage of English decisions." The commissioners do not contemplate any great extension of arbitration, the results of which are "less satisfactory than those of proceedings in the ordinary courts." They deal at great length with the subject of costs—by the way, referring to a report made by Master Macdonell to the Society of Comparative Legislation, and published in its *Journal*, as containing "valuable information as to the different principles upon which the costs of litigation are regulated in Europe, America, and the British Dependencies." The conclusion arrived at is, "We see no better system for controlling the costs of litigation in our Supreme Court than the English system of a scale of costs applicable to all the work to be done, and applied under the supervision of a highly trained taxing officer." One somewhat novel suggestion is that the item "instructions for brief" in a bill of costs shall be accompanied by a detailed statement of the services included thereunder, together with a list of the number of attendances and their length. Another novel suggestion is that the rule as to one-sixth should be so modified that the client might be allowed to challenge particular items only, the costs or taxation to be determined with reference to those items. The commissioners hold in regard to court fees the ideas of Bentham, and they make on this subject an important proposal: "If an Act of Parliament be so drafted that a protracted argument before the full court is necessary to define what may be done or what may not be done, it seems hard that the individual litigant should bear the whole expense. We should recommend a provision, carefully guarded, enabling the full court in extreme cases to order that some defined portion of the expenses of the parties should be paid out of a fund of which the court fees should be the nucleus."

The commissioners are alive to the evils connected with pleadings, interrogatories, and discovery. They do not recommend making compulsory a summons for directions; but they "strongly advocate as a general principle that in every trial the judge should adjudicate, as, of course, not only upon the issues, but upon the procedure, in the action." They do not say that they are hopeful that this can in practice be carried out. Interrogatories should be allowed without an order, but in every case at the cost of the party delivering them, unless the judge at the trial certifies that the interrogations were proper. Juries, the commissioners think, should be made use of only by consent of all parties or by order of a judge. "Trial by jury in civil cases leads to increased delay and uncertainty, *ad captandum* addresses, confusion of issues, and verdicts according to sentiment and prejudice." There is not a sufficient volume of business in the Victorian courts to justify the imitation of the Commercial Court. No countenance is given to the idea of putting equity and common law causes into the same lists. The former should be dealt with, it is suggested, by judges versed in equity principles and practice.

The strictures passed on the circuit system of the colony sound

familiar: "The number of places in which the Supreme Court sits in the country appears to be greatly in excess of reasonable requirements. . . . It not infrequently happens that insufficient time is allowed to dispose of the business at one town before the day fixed for the next town." The commissioners are averse to the formation of a court of criminal appeal. They think highly of the value of official shorthand writers, and recommend the appointment of one or two, to be paid by a fixed salary, and bound to attend in any court as they may be directed by a judge. Of some of the recommendations specially relating to Victoria we have said nothing; but the above extracts show that the report, which is an admirable piece of work, proceeds on lines familiar to English lawyers.

Foreign Opinion of English Judges.—In Dr. Speyer's newly published work, *Les Vices de Notre Procédure en Cour d'Assises*,—an elaborate study of the existing systems of criminal procedure in Europe,—there is much criticism of English procedure. But the author writes enthusiastically of the English Bench. Here is one of the passages in which he mentions our judges: "Aucune autre nation n'a pas dans ses magistrats la confiance dont les Anglais honorent leur juges." Here is another reference to "les hommes éminents que l'Angleterre a le bonheur inappréciable d'avoir comme juges": "Les hommes, qui joignent à une profonde science du droit l'esprit pratique qui fait la puissance de leur race, une connaissance intimé du caractère humain et la conception la plus haute des devoirs de leur charge." Again, Dr. Speyer remarks, "Tout le monde est convainçu de l'absolue impartialité du juge." Dr. Speyer's praise is the more valuable that he has studied English law carefully and is by no means inclined to praise it indiscriminately.

The Value of Juries.—Dr. Speyer, in his survey of the legislation and practice of European countries as to juries, does not rate them so lightly as is now customary. With reference to his own country (Belgium), he remarks that they are a necessary counterpoise to the tendency on the part of the judges to take the side of the prosecution. He praises the honesty and good sense of the Belgian juries; but we note that he complains in strong terms of the *entrevues clandestines* with the juries which are now tolerated. "On observe," he remarks, "chez le juré Belge un certain manque d'équilibre"; and he adds with respect to the liability to stray into false issues, "Ces digressions, ces incidents et les verdicts injustifiables qu'ils occasionent, deviendraient, croyons nous, très rares si notre procédure était régie par des principes semblables à ceux qui gouvernent la production de la preuve en Angleterre."

Unanimity among Jurors.—If trial by jury in civil cases is on the wane in England, its decay must be attributed to nothing so much as the rule which exacts unanimity in verdicts. This rule is constantly leading to wasted proceedings; for men can no more all think alike than they can all look alike. Disagreement may not always be persisted in, but it is safe to occur in any case involving a serious conflict of evidence. It is needless

to say that the unanimity rule has not escaped criticism. The English Commission in 1831 condemned it. Hallam denounced it as "A preposterous relic of barbarism." Several States of the American Union have abolished it, we are told, with the happiest results. Their example is now being followed in many of the British colonies. In New Zealand, for instance, if three-fourths of any jury impanneled in any civil cause, after three hours, intimate that there is no probability of their agreeing, the verdict of the three-fourths is to be received. In British Columbia a verdict of three-fourths may be received on trial of any action after the expiration of three hours from retirement, and is to be as binding as if it were the unanimous verdict of the jury. In Ontario it is sufficient in civil cases if ten out of the twelve agree in the verdict. In Jamaica five out of seven suffice. In Hawaii nine out of twelve. Looking at the widespread acceptance of the majority principle in all political and social matters, it is singular that this superstition of jury unanimity in civil cases should be so tenacious.

Legal Names.—In the *Law Quarterly Review* is an interesting article on the "Names and Nature of the Law" by Mr. Salmond; in other words, on the ideas which lie at the root of such words as *jus*, *droit*, *recht*, δίκη, θέμις, etc. One point brought out is that almost every language possesses two classes of names for law: to one belong such words as *jus*, *droit*, *recht*, *diritto*, *equity*; to the other, such words as *lex*, *loi*, *gesetz*, *legge*, *law*,—the former having an ethical as well as juridical connotation, the other a purely juridical. Mr. Salmond points out that a word so important as *jus* failed to maintain itself in the Romance languages. "Of the two terms *jus* and *lex*, bequeathed to later times by the Latin language, one was accepted (*loi* = *lex*), and the other rejected or supplemented by a modern substitute (*droit* = *diritto*)." Mr. Salmond does not profess to exhaust an immense subject, nor does he refer to authorities who have discussed with even wider knowledge than his the same point: for example, Professor Wundt's discussion, *Das Sittliche in der Sprache*, and the remarks on the subject in his *Ethics*.

The Cyprus Law Reports.—Among the many reports of colonial courts which we have received, few contain more varied cases than the reports of the Supreme Court of Cyprus. In one instance the court had to apply the decision of the Judicial Committee in *Parapano* v. *Happaz*, that the legitimacy of a Roman Catholic Ottoman subject is to be ascertained by applying the "Christian law," not the Mahommedan. The judges, in acting on the ruling of the Privy Council, say: "We find some difficulty in understanding what meaning is to be attributed to the expression 'Christian law.' There are different Christian sects in Cyprus, and difficulties may arise in determining which is the Christian law to be applied where the parties to a proceeding belong to different Churches. To what ecclesiastical superior, for instance, should a dispute be referred the parties to which belonged to the Roman and Greek Churches respectively?" A novel point, revealing the

presence of ideas wholly foreign to English law, was raised in *Erickzade* v. *Arghiro*. The plaintiff complained that the defendant had built a new house, and constructed a balcony which looked into the room which the women of the plaintiff's household occupied. This was said to be contrary to s. 1199 of the Mejellé, which defines "a great nuisance or injury" (ὑπέρογκος βλάβη) as "everything which causes damage to the house, or causes it to fall, or prevents the original use"; and an infringement of s. 1202, the literal translation of which from the Turkish is: "It is considered as a great nuisance that a place used by women, such as the kitchen, the mouth of the well, and the yard of a house, should be seen." The Court thought that this prohibition referred to the places mentioned in the Mejellé and others of a similar nature—*i.e.* those which women must necessarily make use of in order to carry on ordinary household duties, and the protection of which from overlooking is a matter of difficulty. The annoyance complained of was not of this kind. By putting up blinds or curtains the plaintiff might screen himself and the dwellers in his house from the view of curious eyes. From several decisions it appears that many difficulties originate in the imperfection of the translations which the Cyprus courts employ. More than once they complain of errors in the Greek and French translations of the Turkish text of the Mejellé; and their reasoning as to such words as *vasiyet*, *sened*, διαθήκη, ἔγγραφα, *testaments*, *documents*, suggests that there are in alien legal systems no exact synonyms.

Prisoners Giving Evidence in Natal.—From the Natal law reports which have been sent to us it appears that in *Reg.* v. *Umtante and Others* the Natal Supreme Court has had before it facts substantially identical with those which came before the court for Crown Cases Reserved in *Reg.* v. *Payne* L. R. 1 C. C. R. 349. Four natives were tried for murder before Mr. Justice Mason. Two of the accused elected to give evidence on their own behalf, and in so doing gave evidence against the other two. The court held that the Natal Evidence Act of 1888 (Law 37 of 1888) abrogated the common law rule, and made this evidence admissible. We notice that Gallwey, C. J., does not think that our elaborate Criminal Evidence Act of 1898 is any improvement on "the short, simple statute of the colony."

Copyright in Telegrams.—A measure has been introduced into the Indian Legislative Council for the purpose of amending the law as to copyright in telegrams. In the statement of the objects of the measure it is remarked: "Attention has again been drawn to the particular question of the protection of telegraphic news, and it seems to the Government of India that legislation regarding it is called for, and that there is no necessity to postpone it any longer. The great importance to the Indian public of a first-rate service of telegraphic news cannot be denied; it is undoubted that enterprise in that direction is being checked because the existing law recognises no right of property in published telegrams, and the systematic piracy of expensive foreign Press messages has been the result; and the need for

legislation has lately been recognised and acted upon by the colonial legislatures of New Zealand, Australia, the Cape of Good Hope, Hong-Kong, and Ceylon. In these circumstances it has been decided to introduce the present Bill, which has been framed somewhat on the model of the most recent of the colonial enactments alluded to—namely, that passed into law in Ceylon last year, and entitled, 'The Telegram Copyright Ordinance, 1898.'" The Bill proposes a close period of sixty hours from the time of receipt The penalties are a maximum fine of one hundred rupees for the first offence and of five hundred rupees for a second. At the conference, the other day, of the Institute of Journalists, Mr. Joseph Watson read a paper in which he made the following statement as to the law respecting foreign telegrams in some colonies: "In South Australia an Act of 1872 gives twenty-four hours from time of first publication. In West Australia an Act of 1872 gives seventy-two hours. In Tasmania an Act of 1884 gives eighteen hours. In the Cape of Good Hope an Act of 1880 gives one hundred and twenty-four hours. In Natal an Act of 1895 gives twenty-nine hours. In New Zealand an Act of 1884 gives twenty-four hours. In Ceylon an Act of 1898 gives forty-eight hours."

The Construction of Treaties.—There has been much discussion of late on the subject of the interpretation of treaties. Are they to be construed as other documents? and, if so, are the rules of construction applied by English lawyers the same as those which writers on international law recognise? Or are such documents to be read according to rules peculiar to themselves? It is astonishing how vaguely and variously writers express themselves on this point. The more recent authorities are no less vague than the earlier. Most authorities say that treaties are to be construed in the same manner as municipal laws and other documents; but construed as such documents would be in an English court or a French, or otherwise? Grotius gives certain rules as to the intrepretation of treaties (3, 20, 21). Many of these state presumptions the general acceptance of which nowadays is doubtful. It is highly questionable whether the following rule, for example, would be accepted by modern diplomatists: "Nomina regionum accipienda ex usu præsentis temporis, non tam vulgi quam peritorum" (3, 20, 23). Puffendorf and Vattel give a list of rules, some of them arbitrary and not in accordance with modern usages. One of the latest and best writers on the subject, Professor Ullmann, of Munich, says, "Formell anerkannte Regeln der Interpretation kennt das Völkerrecht nicht"—"There are no hard and fast rules of construction of treaties." He admits that the rules laid down by writers on Roman law have been more or less recognised; but he winds up by saying that treaties are to be construed as *bonæ fidei negotia*. The contracting parties are bound to look not only at what is contained in a treaty, but it has to be carried out in the sense which justice, good morals, and good faith require. Probably Mr. Hall's statement of the principles of construction is as clear as any, but it is incomplete. Few

subjects more need consideration at the hands of writers on international law than this.

Chinese Marriages in Hong-Kong.—Mr. J. F. Reece, of Hong-Kong, has sent us an elaborate paper on the status of Chinese married women in that colony. It is unfortunately impossible to print the paper at length; but we epitomise a few of the chief passages showing its purport. The Hong-Kong courts have treated the first or principal wife of a Chinese household as possessing the status of a wife; and it has been the practice to grant letters of administration to such wife, to make the husband responsible for her support, and to hold that she is, in general, incompetent in criminal matters to give evidence against him. Mr. Reece thinks that this is wrong. Looked at from English law, "a marriage according to Chinese law and custom not being the voluntary union for life of one man and one woman, to the exclusion of all others, cannot be recognised by the English law, and, having regard to the introduction of English law into the colony, it cannot, in the absence of local legislation on the subject, be legally recognised by the courts of this country." Mr. Reece argues that there has been no such local legislation, and that there has been no reservation of native law or custom by proclamation or otherwise. "The conclusion seems to be," Mr. Reece remarks, "that in the case of Chinese the court has no power to grant administration to the widow or to the next of kin (there being in law neither the one nor the other), but that administration must be granted to the registrar or to a creditor or to some other person, and that if the deceased die domiciled in China the estate must then be distributed, so far as chattels personal are concerned, according to the customs and usages of Chinese people, and as far as chattels real are concerned according to the law of this colony." Mr. Reece suggests the appointment of a commission composed of local lawyers and Chinese scholars to enquire and report what are the Chinese laws and customs with respect to family, marriage, adoption, and succession, and how far it is expedient to recognise such laws and customs, and what steps, if any, should be taken to define the law of the colony.

Old Age Pensions in New Zealand.—Legislative experiments are much more easy in a young country than in a country like England, with a social system representing the slow growth of centuries. The Old Age Pensions' problem is an instance. It has hitherto baffled our politicians and economists to frame a practicable scheme; yet what is to us still a shadowy ideal is in New Zealand already an accomplished fact, and likely soon to become so in Victoria. In the "Review of Legislation," at p. 507, will be found a sketch of the New Zealand scheme. The critical question in regard to it was, how many persons would put in claims and satisfy the statutory conditions. The result so far is that there are nine thousand pensioners whose pensions amount in the aggregate to £150,000. It is to be borne in mind, however, that the qualification standard was

put high. The claimant must have resided continuously in the colony for not less than twenty-five years immediately preceding the claim; he must not have been imprisoned during twenty-five years for a term of five years with or without hard labour, for any offence dishonouring to him in public estimation; he must not, among other things, have deserted his wife or neglected his children—must have led a sober and reputable life—must, in fact, be something of a social paragon. One circumstance which helps to simplify the problem for the colonies is that many, if not most of them, have checked the influx of pauperism by legislation against alien immigration.

English Law in Hawaii.—Mr. Blackman, in his interesting volume lately published, *The Making of Hawaii*, points out that the Common Law of England has been extended to the island. As far back as 1843 an attempt of this kind was made, but with indifferent success. Now, however, the change appears to be completely carried out. "By the Judiciary Act of 1892 the Common Law of England, whose conclusions, doctrines, principles, definitions, and applications John Ricord had sought to incorporate, so far as was then practicable, into the statute laws of Kamehama III., was made the Common Law of the Hawaiian Islands." Equity jurisprudence, which was definitely established in 1876, has, we are told, "reached practically the same form with American and English equity." This is compatible with an astonishing variety in the cases coming before the courts in this *colluvies gentium*. Mr. Justice McCully, on examining the records of the sixteen Crown cases which had been appealed to the Supreme Court prior to 1888, found that nine of the defendants were Chinese, five Hawaiians, one American, and one Norwegian. Of the cases, one was concerned with a lottery, one was a case of perjury, and three related to the sale of opium. Several cases involved water rights, *taro* and rice culture—the old Hawaiian and new Chinese modes coming into collision. Other cases concerned rights of way, growing out of the evolution of ancient footpaths into roads and streets; others, boundary lines, antedating the practice of surveying by instruments. There were numerous Bills in equity for the cancellation of deeds on the ground that aged and ignorant Hawaiians had been deceived in executing such instruments. There were cases involving confusion from the loose methods of employing proper names habitual to the natives—as when one Naihe gained the sobriquet Kikipine, or "Six Pins," from being employed in a bowling-alley. There were leprosy cases, mostly turning on the question whether the segregation laws were constitutional; and there were cases involving the right to fish out to "chin deep," and of "tenants in the waters of landlords."

Printed by Hazell, Watson, & Viney, Ld., London and Aylesbury.

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